VOL. VI.

TRANSCRIPT OF RECORD.

65582

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 396.

WILLIAM R. WILLCOX ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK.

No. 397.

THE CITY OF NEW YORK, APPELLANT,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK.

No. 398.

WILLIAM S. JACKSON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, APPELLANT,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 16, 1905.

(21,176, 21,177; 21,178.)

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8533 AGENCY AGREEMENT.

Agreement made the 31st of December, 1902, between the Consolidated Gas Company of New York and the New Amsterdam Gas Company, corporations duly organized and existing under the laws of the State of New York.

1. The Consolidated Gas Company of New York hereby employs the New Amsterdam Gas Company as its agent, and upon the terms hereinafter mentioned, to manufacture, produce and deliver to it, for the term of five years, such illuminating gas of the illuminating power required by the laws of the State of New York, as it may require during each year for said term of five years—estimated to be equal to at least 500,000,000 cubic feet per year, and to deliver the same to the gas holders, mains or meters of the Consolidated Gas Company of New York in such quantities and at such times as may be reasonably required by it.

The New Amsterdam Gas Company agrees to manufacture, produce and deliver such gas as aforesaid as the agent of the Consolidated Gas Company of New York.

2. The New Amsterdam Gas Company shall as agent for the Consolidated Gas Company of New York, purchase all the constituent materials and furnish labor necessary for such manufacture, production and delivery and employ in such manufacture, production and delivery, its own plant and appliances.

3. At the expiration of each month the New Amsterdam Gas Company shall render to the Consolidated Gas Company of New York an account of the cost of gas materials used and the gas labor
8534 furnished in manufacturing said gas together with the so-called station repairs during said month, and the Consolidated Gas Company of New York agrees to pay to the New Amsterdam Gas Company within ten days thereafter the amount due according to the said account, together with an additional ten per cent. thereof, which shall be in full for the services of the latter company and for the use of its plant and appliances during said month, and in full also for all claims for taxes on said plant and for insurance thereon and for all administrative and general expenses and of all other claims whatsoever, except as hereinafter mentioned.

4. The Consolidated Gas Company of New York shall have the right to examine at any reasonable time during business hours the manufacturing records, books and bills of cost of the materials and labor, and also any other books, bills and papers containing records of the total cost of the gas manufactured under the terms of this contract.

5. The Consolidated Gas Company of New York further agrees that it will at the end of every period of six months during the term of this Agreement, pay to the New Amsterdam Gas Company interest at the rate of five (5%) per cent. per annum for the previous six months upon the amounts expended by the New Amsterdam Gas Company in making additions to its Ravenswood Works since March

First, Nineteen hundred and one, for the purpose of increasing or facilitating the manufacture of gas.

6. This Agreement may be terminated at any time after July 1st, Nineteen hundred and four, at the option of either party hereto, by its giving notice of its election so to do one year in advance of the date of such termination.

8535 7. If no notice of termination shall have been given under the provisions of the preceding paragraph, the Consolidated Gas Company of New York may renew this agreement upon the same terms and under the same conditions for an additional period of five (5) years, providing the said Company notifies the New Amsterdam Gas Company in writing during the last six months of the present term of its election so to do.

In Witness Whereof, The companies have caused this agreement to be executed under their respective corporate seals by their respective Presidents and attested by their respective Secretaries the day and year first above written.

CONSOLIDATED GAS COMPANY OF NEW YORK,
(Signed) By W. R. ADDICKS, *Vice-President.*

Attest:
(Signed) R. A. CARTER,
Secretary.

NEW AMSTERDAM GAS COMPANY,
(Signed) By C. W. ACAM, *Vice-President.*

Attest:
(Signed) M. M. GRAHAM,
Secretary.

8536 AGENCY AGREEMENT.

Agreement, made the 31st day of December, 1902, between the Consolidated Gas Company of New York and The Standard Gas Light Company of the City of New York, corporations duly organized and existing under the laws of the State of New York.

1. The Consolidated Gas Company of New York hereby employs The Standard Gas Light Company of the City of New York, as its agent and upon the terms hereinafter mentioned, to manufacture, produce and deliver to it for the term of five (5) years, such illuminating gas of the illuminating power required by the laws of the State of New York as it may require during each year, for the said term of five (5) years, estimated to be equal to at least five hundred million (500,000,000) cubic feet per year, and to deliver the same to the gas holders, mains or meters of the Consolidated Gas Company of New York, in such quantities and at such times as may be reasonably required by it.

The Standard Gas Light Company of the City of New York agrees

to manufacture, produce and deliver such gas as aforesaid, as the agent of the Consolidated Gas Company of New York.

II. The Standard Gas Light Company of the City of New York shall, as agent for the Consolidated Gas Company of New York, and at a reasonable rate, purchase all the constituent materials and furnish the labor necessary to such manufacture, production and delivery and employ in such manufacture, production and delivery its own plant and appliances.

8537 III. At the expiration of each month, The Standard Gas Light Company of the City of New York shall render to the Consolidated Gas Company of New York on account of all expenditures for constituent materials and labor made by it, as aforesaid, during each month, and the Consolidated Gas Company of New York agrees to pay to The Standard Gas Light Company of the City of New York, within ten (10) days thereafter, the amount due, according to such accounts, together with an additional ten per cent. (10%) thereof, which shall be in full for its services and the use of its plant and appliances during the said month.

IV. The Consolidated Gas Company of New York shall have a right to examine, at any reasonable time during business hours, the manufacturing records, books and bills of cost of the said constituent materials and labor, and also any other books, bills and papers containing records of the total cost of the gas manufactured under the terms of this contract.

V. This agreement may be terminated at any time, after July 1, 1904, at the option of either party hereto, by its giving notice of its election so to do one year in advance of the date of such termination.

VI. If no notice of termination shall have been given, under the provisions of the preceding paragraph, the Consolidated Gas Company of New York may renew this agreement upon the same terms and under the same conditions for an additional period of five (5) years, provided the said Company notifies The Standard Gas Light Company of the City of New York, in writing, during the

8538 last six months of the present term, of its election so to do.

In Witness Whereof, the Companies have caused this agreement to be executed under their respective corporate seals by their respective Presidents and attested by their respective Secretaries, the day and year first above written.

CONSOLIDATED GAS COMPANY OF NEW YORK,

(Signed) By H. E. GAWTRY, *President.*

Attest:

(Signed) R. A. CARTER, *Secretary.*

THE STANDARD GAS LIGHT COMPANY OF THE CITY OF NEW YORK,

(Signed) By —— ——, *President.*

Attest:

(Signed) —— ——, *Treasurer.*

8539 AGENCY AGREEMENT.

Agreement, made the 31st day of December, 1902, between the Consolidated Gas Company of New York and the New York Mutual Gas Light Company, corporations duly organized and existing under the laws of the State of New York.

1. The Consolidated Gas Company of New York hereby employs the New York Mutual Gas Light Company, as its agent and upon the terms hereinafter mentioned, to manufacture, produce and deliver to it for the term of five (5) years, such illuminating gas of the illuminating power required by the laws of the State of New York as it may require, during each year, for the said term of five (5) years, estimated to be equal to at least one hundred million (100,000,000) cubic feet per year, and to deliver the same to the gas holders, mains or meters of the Consolidated Gas Company of New York, in such quantities and at such times as may be reasonably required by it.

The New York Mutual Gas Light Company agrees to manufacture, produce and deliver such gas, as aforesaid, as the agent of the Consolidated Gas Company of New York.

II. The New York Mutual Gas Light Company shall, as agent for the Consolidated Gas Company of New York, and at reasonable rates, purchase all the constituent materials and furnish the labor necessary to such manufacture, production and delivery and employ in such manufacture, production and delivery its own plant and appliances.

III. At the expiration of each month, the New York Mutual Gas Light Company shall render to the Consolidated Gas Company of New York an account of all expenditures for constituent
8540 materials and labor made by it, as aforesaid, during such month, and the Consolidated Gas Company of New York agrees to pay to the New York Mutual Gas Light Company, within ten (10) days thereafter, the amount due, according to such accounts, together with an additional ten per cent. (10%) thereof, which shall be in full for its services and the use of its plant and appliances during the said month.

IV. The Consolidated Gas Company of New York shall have a right to examine, at any reasonable time during business hours, the manufacturing records, books and bills of cost of the said constituent materials and labor, and also any other books, bills and papers containing records of the total cost of the gas manufactured under the terms of this contract.

V. This agreement may be terminated at any time, after July 1, 1904, at the option of either party hereto, by its giving notice of its election so to do one year in advance of the date of such termination.

VI. If no notice of termination shall have been given, under the provisions of the preceding paragraph, the Consolidated Gas Company of New York may renew this agreement upon the same terms and under the same conditions for an additional period of five (5)

years, provided the said Company notifies the New York Mutual Gas Light Company, in writing, during the last six months of the present term, of its election so to do.

In Witness Whereof, the Companies have caused this agreement to be executed under their respective corporate seals by their
8541 respective Presidents and attested by their respective Secretaries, the day and year first above written.

CONSOLIDATED GAS COMPANY OF NEW YORK,

(Signed) By H. E. GAWTRY, *President.*

Attes-:
(Signed) R. A. CARTER, *Secretary.*

NEW YORK MUTUAL GAS LIGHT COMPANY,

(Signed) By R. W. GALLOWAY, *President.*

Attes-:
(Signed) W. A. SASSON, *Secretary.*

8542 OFFICIALS AND EMPLOYEES—GENERAL OFFICE.

Year 1905.

Name.	*Position.*
H. E. Gawtry	Chairman of the Board of Trustees
W. R. Addicks	Vice-President
L. B. Gawtry	Vice-President
J. A. Bennett	Treasurer
B. Whiteley	Assistant Treasurer
R. A. Carter	Secretary
C. C. Simpson	Assistant Secretary
F. Poughkeepsie	Adjuster of Claims
J. B. Gerard	Transfer Clerk, Stock Transfer Department
W. Young	Assistant Transfer Clerk and Filing Clerk
C. M. Carbonell	Assistant to Acting President
W. H. Deeves	Stenographer
C. H. Siebold	Stenographer
H. Franks	Stenographer
H. E. Almberg	Managing Clerk, Claims and Arrears Department
S. B. Ross	Stenographer
Harriet Woods	Purchasing Agent
E. North	Clerk, Purchasing Department
L. S. Smith	Paymaster
T. G. Ascough	Paymaster
L. Durham	Special Officer, Paymaster Department
A. Phillips	Manager Real Estate Dep't and Assistant to Engineer of Distribution
G. Franklyn	Porter
B. Lindon	

C. Gardiner ..... Porter
H. Kelly ..... Night Watchman
Geo. Powell ..... Night Watchman
A. B. Silkworth ..... Superintendent of Buildings
Joseph Cochrane ..... Carpenter
J. H. Hill ..... Porter and Messenger
G. W. Hicks ..... Office Boy
E. Jaynes ..... Office Boy
W. R. Schoenfisch ..... Clerk, Purchasing Department
Wm. Rogers ..... Clerk, Engineering Department
8543 M. Reddington ..... Office Boy
Miss M. F. Carbonell ..... Clerk
Miss May F. Dillon ..... Telephone Operator
F. Ancrum ..... Elevator Man
W. Wood ..... Porter
E. R. Jourdan ..... Assistant General Superintendent of Mains
A. Postley ..... Assistant General Superintendent of Mains
A. C. Postley ..... Inspector of Street Openings
J. T. White ..... Clerk, Street Department
F. L. Lambrecht ..... Auditor
H. M. Brundage ..... Chief Accountant
F. R. Barnetz ..... General Office Assistant
J. B. Duryee ..... Clerk, Accounting Department
B. G. Furey ..... Clerk, Accounting Department
W. G. Zepf ..... Clerk, Accounting Department
J. J. Norton ..... Clerk, Accounting Department
J. H. Nickerson ..... Clerk, Accounting Department
W. de Hart ..... Clerk, Accounting Department
P. L. Freeman ..... Clerk, Purchasing Department
P. R. Farrell ..... Clerk, Accounting Department
L. H. Werner ..... Clerk, Accounting Department
E. C. Sanderson ..... Clerk, Accounting Department
Frank Bischoff ..... Clerk, Accounting Department
W. G. Morris ..... Clerk, Accounting Department
E. Donnelly ..... Clerk, Accounting Department
G. K. Frazier ..... Collector
Chas. A. Dayton ..... Cashier
H. L. McCormick ..... Clerk, Cashier Department
Josephine T. White ..... Telephone Operator
E. W. Burdick ..... Manager Claims and Arrears Department
F. L. Sullivan ..... Assistant Manager Claims and Arrears Department
J. A. Kenny ..... Collector, Claims and Arrears Department
H. D. Macdona ..... Legal Services
J. G. Roberts ..... Clerk, Claims and Arrears Department
E. Dillon ..... Clerk, Claims and Arrears Department
W. H. H. Meyers ..... Collector, Claims and Arrears Department
C. E. Smith ..... Collector, Claims and Arrears Department
A. Cooper ..... Inspector, Meter Department
R. C. Poissant ..... Driver
8544 J. W. Grimmer ..... Chauffeur
W. McCaffray ..... Chauffeur
E. O. Coles ..... Inspector, Street Department

Dr. H. N. Taylor.....Doctor, Employees' Friendly Aid Society
J. H. Cummings.....Draughtsman, Engineering Department
O. H. Fogg.....Street Department Pressure
Wm. H. Bradley.....Chief Engineer
Geo. E. Woods.....Engineer of Manufacture
A. H. Elliott.....Engineer Chemist
A. M. Smith.....Engineer of Distribution
Howard Bruce.....Engineer of Construction
J. H. Shortt.....Draughtsman, Engineering Department
Harold Carpenter.....Chief Draughtsman, Engineering Department
T. N. Case.....Chief Draughtsman, Engineering Department
M. Shiebler.....Assistant Engineer of Construction
W. Strobridge.....Draughtsman, Engineering Department
O. Bodelsen.....Draughtsman, Engineering Department
C. L. Gosnell.....Draughtsman, Engineering Department
A. Nielson.....Draughtsman, Engineering Department
W. H. Alrich.....Draughtsman, Engineering Department
O. Schroeder.....Draughtsman, Engineering Department
M. L. Macintosh.....Draughtsman, Engineering Department
H. L. Armstrong.....Clerk, Engineering Department
F. Snyder, Jr.....Stenographer, Engineering Department
W. Regan.....Assistant in Chemical Laboratory
A. Van de Dreische.....Draughtsman
J. H. Ihart.....Assistant in Chemical Laboratory
J. McVey.....Assistant in Chemical Laboratory
Joshua Snowden.....Stenographer, Engineering Department
Anastasia Roche.....Stenographer, Engineering Department
G. McCormick.....Clerk, Engineering Department
J. Mansfield.....Assistant Draughtsman, Street Department
J. W. Price.....Telephone Operator
H. Gallagher.....Office Boy, Engineering Department
H. Irwin.....Clerk, Engineering Department
E. B. Annett.....Draughtsman, Engineering Department
G. C. Shaw.....Draughtsman, Engineering Department
C. J. Gefert.....Draughtsman, Engineering Department
H. J. Brady.....Mailing Clerk, Engineering Department
B. Schoenfeldt.....Draughtsman, Engineering Department
8545 J. W. Corbet.....Clerk, Engineering Department
N. J. Sperling.....Draughtsman, Engineering Department
J. J. Smith.....Blueprint Boy, Engineering Department
May Marlow.....Stenographer
H. C. Palmer.....Draughtsman, Engineering Department
D. Hauser.....Elevator Man
J. J. Viebruck.....Clerk, Accounting Department
H. S. Leahy.....Clerk, Accounting Department
A. G. Buckingham.....Inspector, Engineering Department
F. Snyder.....Chauffeur
C. F. Forsburg.....Draughtsman, Engineering Department
W. E. Paulson.....Inspector
W. B. Davis.....Assistant, Claims and Arrears Department
J. Tolliver.....Porter, Laboratory
R. B. Weber.....Mailing Clerk, Engineering Department

M. E. Mueller.....Draughtsman, Engineering Department
E. Harrington.....Stenographer, Engineering Department
Paul Herfort.....Draughtsman, Engineering Department
J. G. Weyland.....Draughtsman, Engineering Department
Harold Shields.....Draughtsman, Engineering Department
O. A. Pope.....Draughtsman, Engineering Department
Wm. Heyman.....Draughtsman, Engineering Department
J. B. Croker.....Draughtsman, Engineering Department
R. G. Lucas.....Draughtsman, Engineering Department
Louis Peterson.....Stenographer, Engineering Department
R. S. Baldwin.....Draughtsman, Engineering Department
Julius E. Reinhardt.....Draughtsman, Engineering Department
P. R. Van Sholby.....Assistant in Chemical Laboratory
Wm. Bode.....Draughtsman, Engineering Department
A. Anderson.....Stenographer, Engineering Department
B. Winslow.....Inspector of Street Openings
Thos. Byrnes.....Office Boy, Engineering Department
B. Coyle.....Office Boy
E. J. Bennett.....Collector, Claims and Arrears Department
W. C. Morris.....Assistant Engineer of Manufacture
O. F. Balston.....Inspector, Engineering Department
H. C. Howell.....Draughtsman, Engineering Department
W. T. Thecker.....Draughtsman, Engineering Department
H. C. Backe.....Mailing Clerk, Engineering Department
E. J. Rowe.....Collector, Claims and Arrears Department
8546 E. Dillon .....(Duplicate)
H. C. Picard.....Elevator Man
Frank Monday.....Stenographer and Messenger
R. D. Rubright.....Clerk, Accounting Department
Geo. Duke .....Office Boy
Wm. Lang .....Office Boy
Wm. R. Tyler.....Draughtsman, Engineering Department
Eugene Nelson .....Pressure Man
Wm. Jordan .....Pressure Man
Frank Holdenecker .....Pressure Man
D. Sullivan .....Pressure Man
Alfred Grant .....Pressure Man
B. E. Dimes.....Stenographer
Mamie Burns.....Typewriter, Engineering Department
Jacob Zabo.....Draughtsman, Engineering Department
John Mulholland.....Night Telephone Operator

8547 Circuit Court of the United States, Southern District of New York.

CONSOLIDATED GAS COMPANY OF NEW YORK, Complainant,

vs.

JULIUS M. MAYER, as Attorney General of the State of New York; WILLIAM TRAVERS JEROME, as District Attorney of New York County; FREDERICK E. GUNNISON, JOHN C. DAVIES, and LUCIAN L. SHEDDON, Constituting the New York State Commission of Gas and Electricity, and THE CITY OF NEW YORK, Defendants.

Before Hon. Arthur H. Masten, Special Master.

Report of Marwick, Mitchell & Co., Chartered Accountants.

Employed by the City of New York.

NEW YORK, *November* 26, 1906.

To Hon. William B. Ellison, Corporation Counsel, Solicitor for the Defendant The City of New York, William P. Burr, Esq., of Counsel.

8548 GENTLEMEN:

In accordance with your instructions, we have examined the item "Sundry Creditors, $3,357,037.95" in Exhibit No. 80, submitted by the Complainant in the above entitled action, and find that it is made up as follows:

Metropolitan Gas Light Company Bond—Balance	$500.00
Bond Interest Accrued	34,675.00
Dividends not called for	15,604.00
Sundry Creditors	1,208,088.23
Employees Aid Society	23,454.58
Accrued Taxes	1,652,593.74
Accrued Water	8,408.15
Accrued Debenture Interest	397,152.00
Stove Rent Suspense Account	11,562.25
Special Suspense	5,000.00
	$3,357,037.95

Should you desire any further information we shall be pleased to obtain it.

Yours truly,

MARWICK, MITCHELL & CO.

8549 Circuit Court of the United States, Southern District of New York.

CONSOLIDATED GAS COMPANY OF NEW YORK, Complainant,

vs.

JULIUS M. MAYER, as Attorney General of the State of New York; WILLIAM TRAVERS JEROME, as District Attorney of New York County; FREDERICK E. GUNNISON, JOHN C. DAVIES, and LUCIEN L. SHEDDEN, Constituting the New York State Commission of Gas and Electricity, and THE CITY OF NEW YORK, Defendants.

Before Hon. Arthur H. Masten, Special Master.

Report of Marwick, Mitchell & Co., Chartered Accountants.

Employed by the City of New York.

NEW YORK, *November* 26, 1906.

To Hon. William B. Ellison, Corporation Counsel, Solicitor for the Defendant The City of New York, William P. Burr, Esq., of Counsel.

8550 GENTLEMEN:

In accordance with your instructions, we have made an examination of the Real Estate Accounts of the Companies merged on November 11, 1884, under the name of the Consolidated Gas Company of New York and of that Company from the date of the merger to December 31, 1905, with a view to ascertaining the actual cost of all Real Estate now owned by it.

Immediately upon receipt of your instructions, we made application to the Consolidated Company for all the books necessary to make this examination, and had those specified in Appendix "I" submitted to us. From this you will observe that none of the books of the Metropolitan and Knickerbocker Gas Light Companies could be found, although a thorough search of all the offices of the Companies was made.

The absence of any books would necessarily limit the scope of our investigation, but in order to make our report complete, we decided to make use of a report, prepared during the year 1885 by Mr. J. Yalden, an Accountant of New York City, and submitted to the Hon. John J. Gilbert, Chairman, Hon. Thomas Robinson and Hon. Michael C. Murphy, Committee of the Senate of the State of New York. The Knickerbocker Gas Light Company was taken over by the Municipal Gas Light Company some time prior to November, 1884, consequently, it is only necessary for us to adopt Mr. Yalden's figures in the case of the Metropolitan Company.

As the result of our examination, we have to submit the following report, together with the Exhibits now enumerated:

Exhibit "A," Real Estate transferred by the Manhattan Gas Light Co., on November 11, 1884.

8551 Exhibit "B," Real Estate transferred by the Municipal and Knickerbocker Gas Light Companies, on November 11, 1884.

Exhibit "C," Real Estate transferred by the Harlem Gas Light Co., on November 11, 1884.
Exhibit "D," Real Estate transferred by The New York Gas Light Co., on November 11, 1884.
Exhibit "E," Real Estate transferred by the Metropolitan Gas Light Co., on November 11, 1884.
Exhibit "F," Real Estate acquired by the Consolidated Gas Co. of New York from November 11, 1884, to December 31, 1905.

ORIGINAL COST OF REAL ESTATE NOW OWNED.—The following statement represents a summary of the Real Estate held by the Companies merged as the Consolidated Gas Company of New York, at November 11, 1884, together with the original cost of the same, appreciation written up in their books and the amount at which it was taken over:

	Original cost buildings and improvements.	Appreciation less depreciation prior to Nov. 11, 1884.	Appreciation on transfer to Consolidated on Nov. 11, 1884.	Taken over at
1. Manhattan Gas Light Co.	$1,378,691.45	*21,706.00	2,806,014.55	4,163,000.00
2. Municipal Gas Light Co.	561,462.83	.....	527,537.17	1,089,000.00
3. Knickerbocker Gas Light Co.	.....	.....	595,000.00	595,000.00
4. Harlem Gas Light Co.	313,211.62	.....	440,788.38	754,000.00
5. The New York Gas Light Co.	453,303.77	866,696.23	637,000.00	1,957,000.00
6. Metropolitan Gas Light Co.	671,301.43	739,973.14	362,725.43	1,774,000.00
	$3,377,971.10	1,584,963.37	5,369,065.53	10,332,000.00

*Red ink in original.

From November 11, 1884, to December 31, 1905, the Consolidated Company made certain additions and improvements to Real
8552 Estate, and the following is the present position of the Account:

Taken over at November 11, 1884, as above		$10,332,000.00
Additions and Improvements to December 31, 1905, less Cost to Consolidated Company of Properties Sold		740,296.28
		11,072,296.28
Less: Profit over Cost to Consolidated Company of Properties sold		142,378.00
Book Value at December 31, 1905		$10,929,918.28

This amount is made up as follows:

Purchase price, including Additions and Improvements to November 11, 1884		$3,377,971.10
Purchase price, including Additions and Improvements from November 11, 1884, to December 31, 1905		740,296.28
		4,118,267.38
Appreciation in Accounts of Merged Companies prior to November 11, 1884	$1,584,963.37	
Appreciation on transfer at November 11, 1884	5,369,065.53	
	6,954,028.90	
Less: Profit on Real Estate sold by Consolidated Company and Credited to Purchase Price	142,378.00	
		6,811,650.90
Book Value at December 31, 1905		$10,929,918.28

1. MANHATTAN GAS LIGHT COMPANY.—This Company transferred at the date of the consolidation real estate, as detailed in Exhibit "A," at an appraised value of $4,163,00. The properties originally cost $1,378,691.45. Prior to the transfer in 1884, they had been depreciated by the amount of $21,706.00. The appreciation added at the date of the transfer was $2,806,014.55.

The Book Value of the properties transferred was $3,351,730.74, that is including $1,994,745.29 on account of apparatus charged during the years 1877 and 1881.

2 AND 3. MUNICIPAL AND KNICKERBOCKER GAS LIGHT COMPANIES.—These Companies were organized in 1876 and operated under one management until taken over by the Consolidated
8553 Company in 1884. The following is a statement of the Account at that date. The details will be found in Exhibit "B":

Acquired from Municipal Gas Light Co	$1,089,000.00
" " Knickerbocker Gas Light Co	595,000.00
	1,684,000.00
Original Cost, Including Buildings and Improvements	561,462.83
Appreciation at date of transfer	$1,122,537.17

4. HARLEM GAS LIGHT COMPANY.—The books of this Company have not been kept in such a manner as would enable us to obtain reliable information. The Company was incorporated in 1856. From that date until November 11, 1884, it acquired the real estate specified in Exhibit "C," and transferred at a price of $754,000.00,

including Bulkheads and Office Buildings. We cannot find the cost of the Bulkheads and Office Buildings, but the real estate was purchased, so far as we can determine, at a cost of $163,211.62. The Bulkhead and Office Buildings were transferred at $150,000. We have assumed that they cost the same amount, and have accordingly entered the purchase price of all the properties at $313,211.62. During the year 1875 the Company transferred to the City a certain piece of property at Inwood. We have allowed credit for $23,042.32, the full amount received, as the cost could not be obtained from the books. On May 21, 1866, in accordance with a resolution of the Board of Directors, the Construction Account was charged and the Capital Stock credited with $200,000.00 on account of the increased value of works and plant over the actual cost. A proportion of this amount would properly apply to Real Estate, but exactly
8554 what proportion we cannot determine. As the purpose of this examination is to ascertain the actual cost, this point is not of material importance.

5. THE NEW YORK GAS LIGHT COMPANY.—This Company, the first to manufacture gas in the City of New York, was formed in 1823 under the title of New York Gas Light Company. In 1871 it was reconstructed under its present name. At that time the real estate was appreciated by $933,500.00, from which has to be deducted depreciation written off in previous years, $66,803.67. Again in 1884 a further appreciation of $637,000.00 was made. As a result, the real estate, as detailed in Schedule "D," which cost $453,303.77, was taken over at $1,957,000.00, an appreciation of $1,503,696.23.

6. METROPOLITAN GAS LIGHT COMPANY.—The books of this Company could not be found and we have, as previously mentioned, adopted the figures given by Mr. J. Yalden. From his report, we find that the Real Estate handed over to the Consolidated Company and detailed in Schedule "E" was appraised at $1,774,000.00, that is $1,102,698.57 in excess of the book value, which was $671,301.43. Of this appreciation, $739,973.14 was added prior to November 11, 1884, and $362,725.43 at that date.

CONSOLIDATED GAS COMPANY OF NEW YORK.—From November 11, 1884, to December 31, 1905, the Consolidated Gas Company made certain additions to the Account, details of which will be found in Exhibit "F," and they sold the following lots:

	Cost price.	Sold for	Profit.
First Avenue and 111th and 112th Streets.....	$86,000.00	118,900.00	32,900.00
20th and 22nd Streets, East River Water Front.	247,858.00	247,858.00	
15th and 16th Streets.....	130,000.00	180,000.00	50,000 00
Avenue A, 62nd and 63rd Streets.....	118,600.00	178,078.00	59,478.00
	$582,458.00	724,836.00	142,378.00

8555 The profit shown above is that made on the price paid by the Consolidated Company for these properties. What they originally cost we cannot trace, owing to the lack of definiteness in the books of the merged companies. In the case of the East River Water Front, we find that these bulkheads appeared at a valuation of $250,000. As the Company have retained certain rights and

privileges, their value could not be ascertained. We, therefore, have proceeded on the assumption that the cost price only had been realized.

During the period under review, the Company acquired certain ground at Long Island at a price of $450,000.00, subsequently transferring it to the Astoria Light, Heat and Power Company for $750,000.00, a profit of $300,000.00. This transaction is not included in the figures given by us, as the profit was transferred by the Company to the credit of Profit and Loss Account.

We shall be pleased to furnish any further information you may desire.

Yours truly,

MARWICK, MITCHELL & CO.

8556 EXHIBIT "A.

REAL ESTATE TRANSFERRED BY THE MANHATTAN GAS LIGHT COMPANY.

As at November 11, 1884.

14th Street Station:		
1835-8, 4 lots, Tompkins St., 26 x 109.11½ at $8,000		$32,000.00
1831-4, 4 lots, Tompkins St., 26 x 118.8½ at $8,000		32,000.00
2 Corners at $2,000		4,000.00
		68,000.00
1823-30, 8 lots, Tompkins St., 26 x 117.5 at $8,000	$64,000.00	
2 Corners at $2,000	4,000 00	
		68,000.00
1806-14, 9 lots, Avenue D, E. S. 22.11.4/9 x 88 at $8,000	72,000.00	
2 Corners at $2,000	4,000.00	
		76,000.00
1797-1805, 9 lots Avenue D, 22.11-4/9 x 88 at $7,000	63,000.00	
2 Corners at $2,000	4,000.00	
		67,000.00
1839-44, 6 lots, 14th St. N. S., 25 x 1033 at $10,000		60,000.00
3102-5, 4 lots, 15th St. S. S., 25 x 1033 at $7,000		28,000.00
1779-96, 18 lots, Avenue D, W. S. 22.11-4/9 x 88 at $7,000	135,000.00	
4 Corners at $2,000	8,000.00	
		143,000.00
1845-64, 20 lots, 14th St., N. S. 25 x 1033 at $10,000		200,000.00
3082-3101, 20 lots, 15th St., S. S. 25 x 1033 at 7,000		140,000.00
3108-3127, 20 lots, 15th St., N. S. 25 x 1033 at $7,000		*140,000.00
3408-27, 20 lots, 16th St., S. S. 25 x 1033 at $6,000		*120,000.00
1681-98, 18 lots, Avenue C, E. S. 22.11-4/9 x 88 at $7,500	135,000.00	
4 Corners at $2,000	8,000.00	
		143,000.00
1672-80, 9 lots, Avenue C, W. S. 22.11-4/9 x 88 at $7,500	67,000.00	
2 Corners at $2,000	4,000.00	
		71,000.00
1865-77, 13 lots, 14th St. N. S. 25 x 1033, $10,000		130,000.00
1878, 1 lot, 14th St. N. S. 21′ 10½″ x 1033		9,000.00
3068, 1 lot, 15th St. S. S. 21 x 1033		6,000.00
3069-81, 13 lots, 15th St. S. S. 25 x 1033, $7,000		91,000.00
3048½-3053, 3 lots, 15th St. S. S. average 25 x 1033 at $5,000 (well property, small front)		12,000.00

3074-87, 14 lots, 17th St. N. S. 25 x 92 at $6,000.....		84,000.00
4079-92, 14 lots, 18th St. S. S. 25 x 92 at $6,000.....		84,000.00
Total 14th Street Station, East River.....		$1,740,000.00
18th Street Station:		
2058-66, 9 lots, S. S. 18th St. 25 x 92 at $7,500.....	$67,500.00	
2262-64, 3 lots, N. S. 18th St. 25 x 92 at $7,500.....	180,000.00	
1769-46, 24 lots, N. S. 16th St. 25 x 92 at $7,500.....	180,000.00	
1770-93, 24 lots, S. S. 17th St. 25 x 92 at $7,500.....	180,000.00	
2007-30, 24 lots, N. S. 17th St. 25 x 92 at $7,500.....	180,000.00	
2031-54, 24 lots, S. S. 18th St. 25 x 92 at $7,500.....	180,000.00	
2274-90, 17 lots, N. S. 18th St. 25 x 92 at $7,500.....	127,000.00	
Carried forward.....	$937,500.00	1,740,000.00

8557 REAL ESTATE TRANSFERRED BY THE MANHATTAN GAS LIGHT COMPANY—*Continued.*

Brought Forward.....	$937,500.00	1,740,000.00
18th Street Station—*Cont.*		
2305-10, 2313-16, 2318, 2321, 12 lots, 19th St. 25 x 92 at $7,500.....	90,000.00	
2577-87, 11 lots, N. S. 19th St. 25 x 92 at $7,500.....	82,500.00	
2593-2603, 11 lots, S. S. 20th St. 25 x 92 at $7,500.....	82,500.00	
313-20, 8 lots, W. S. 10th Ave. 23 x 100 at $9,500.....	$76,000.00	
2 Corners at $2,000.....	4,000.00	
	80,000.00	
204-12, 9 lots, W. S. 10th Ave. 20.5½ x 100 at $8,500.....	76,500.00	
2 Corners at $2,000.....	4,000.00	
	80,500.00	
296-303, 8 lots, W. S. 10th Ave. 23 x 100 at $9,500.....	76,000.00	
2 Corners at $2,000.....	4,000.00	
	80,000.00	
161-168, 8 lots, E. S. 11th Ave. 23 x 100 at $9,500.....	76,000.00	
2 Corners at $2,000.....	4,000.00	
	80,000.00	
169-176, 8 lots, E. S. 11th Ave. 23 x 100 at $9,500.....	76,000.00	
2 Corners at $2,000.....	4,000.00	
	80,000.00	
185-192, 8 lots, E. S. 11th Ave. 23 x 100 at $9,500.....	76,000.00	
2 Corners at $2,000.....	4,000.00	
	80,000.00	
1, 8 lots, W. S. 11th Ave. E. S. 13th Ave. (Block) 16th & 17th Streets.....	50,000.00	
9, 8 lots, W. S. 11th Ave. E. S. 13th [illegible] (Block) 17th & 18th Streets.....	100,000.00	150,000.00
Total 18th Street & North River.....		1,823,000.00
Office and dwelling, Irving Place and 15th St., Lots 59 x 92, 50 x 84.		175,000.00
Bulkheads and Water Rights.....		425,000.00
Total.....		$4,163,000.00

* Of this one-half, $130,000.00, sold by Consolidated Gas Company for $180,000.00.

8558 EXHIBIT "B."

REAL ESTATE TRANSFERRED BY MUNICIPAL AND KNICKERBOCKER GAS LIGHT COMPANIES.

As at November 11, 1884.

MUNICIPAL GAS LIGHT COMPANY:		
Real Estate:		
The following described property, located in the 22nd Ward, on blocks bounded by West 44th and West 46th Streets, Eleventh Avenue and Hudson River, New York City, as follows:		
On block 225, Nos. 1 to 28 inclusive, 39 and 41 to 64 inclusive, 52 lots each 25 feet by 100 feet 5 inches, 1 lot 16 feet 8 inches by 100 feet 5 inches		
On block 225a, 54½ lots, each 25 feet by 100 feet (8 lots above water, 32 lots under water, together with bulkhead, water rights and full water grant to exterior city line		
On block 226, Nos. 1 to 20 inclusive, and 45 to 64 inclusive, 54½ lots, each 25 feet by 100		
On block 226a, 40 lots, each 25 feet by 100 feet, 8 lots above water, 32 lots under water, together with bulkhead, water rights and full water grant to exterior city line		
Bulkhead, 517 feet long with two returns, dumping board, including rock filling		$1,083,000.00
On lot No. 29, block 225, there is a two-story and basement frame dwelling house (on the rear of the lot)		2,500.00
On lot No. 39, block 225, there is a three-story brick dwelling house (situated on the front of the lot)		3,500.00
Total Municipal Gas Light Company		1,089,000.00
KNICKERBOCKER GAS LIGHT COMPANY:		
Real Estate:		
Located in the 12th Ward, New York City, as follows:		
On blocks Nos. 214 and 215, bounded by East 98th Street, East 99th Street, Second Avenue and the Harlem River, with bulkhead extending the entire front	$550,000.00	
Carried Forward	$550,000.00	1,089,000.00

8559 REAL ESTATE TRANSFERRED—*Continued.*

Brought forward		$1,089,000.00
KNICKERBOCKER GAS LIGHT COMPANY—*Continued.*		
Brought forward	$550,000.00	
Brick dwelling house, 20 feet by 30 feet, 2 stories and cellar	2,500.00	
Bulkhead	30,000.00	
	582,500.00	
Walls, the property is partially enclosed by 864 feet 3 inches of 12 inch brick wall, 10 feet high panelled with 4 inch pilasters coped with 3 inch blue stone, 14 inches wide, 2½ inch blue stone water table, 2 gates 10 feet wide 1 gate 8 feet 2 inches wide, 1 gate 3 feet 10 inches wide, 1 gate 3 feet wide, 8 gate piers 32 inches by 24 inches and 12 feet high in addition to wall thickness	$11,810.00	
One thousand two hundred and sixty-seven feet of board fence, 4 double gates and 2 single gates	2,534.00	
Say	12,500.00	
Total Knickerbocker Gas Light Company		595,000.00
Total		$1,684,000.00

8560 EXHIBIT "C."

REAL ESTATE TRANSFERRED BY HARLEM GAS LIGHT COMPANY.

As at November 11, 1884.

HARLEM GAS LIGHT COMPANY:

Block 140:		
8 lots Avenue "A"		$36,000.00
Eight lots, First Avenue		48,000.00
Seventeen Lots, 110th Street		68,000.00
Seventeen lots, 111th Street		85,000.00
		237,000.00
Block 141:		
Six lots, First Avenue	$36,000.00	
Eight lots, 111th Street	40,000.00	
Two lots, 112th Street	10,000.00	
		86,000.00*
Block 226:		
Eight lots, First Avenue	48,000.00	
Twelve lots, 110th Street	66,000.00	
Lots gore	3,500.00	
Fifteen lots, 111th Street	82,500.00	
		200,000.00
Block 227:		
Three lots, First Avenue	18,000.00	
Five lots, 111th Street	27,500.00	
Gore, 112th Street	7,500.00	
		53,000.00
Block 68:		
One plot on King's Bridge Road near Inwood		28,000.00
		604,000.00
Bulkhead, Avenue "A" and East River		100,000.00
Office building and lot on Third Avenue and 114th Street		50,000.00
Total		$754,000.00

8561 EXHIBIT "D."

REAL ESTATE TRANSFERRED BY THE NEW YORK GAS LIGHT COMPANY.

As at November 11, 1884.

Block No. 1:		
Avenue "A" and E. R. 21st and 22nd Streets:		
1463-1468, 6 lots at $8,000 each		$48,000.00
Avenue A, 1462 & 1469, 2 Corners at $10,000 ea		20,000.00
22nd St. 5565-5583, 19 lots at $7,000 each		133,000.00
21st. 5282-5300, 19 lots at $7,000 each		133,000.00
Ave. B 1493, 1 Corner at $10,000		10,000.00
Ave. B 1492-1486, 7 lots at $8,000 each		56,000.00
		400,000.00
Block No. 2:		
Ave. A & Ave. B, 20th and 21st St., also Ave. B to E. R.:		
Avenue A 1461, 1 Corner	$10,000.00	
Ave. A 1460 & 1458, 2 lots at $7,000 each	14,000.00	
Ave. B 1494 & 1501, 2 Corners at $10,000 each	20,000.00	
Ave. B 1495-1500, 6 lots at $8,000 each	48,000.00	

*Sold by Consolidated Gas Company for $118,900.00.

21st St. B & 5202-5221, 21 lots at 6,000 each	126,000.00	
20th St. 4938-4957½, 21 lots at $6,000 each	126,000.00	
Ave. B, 1599 & 1600, 2 Corners at $9,000 each	18,000.00	
1600-1605, 6 lots at $7,000 each	42,000.00	
3935-3937, 3 lots at $6,500 each	19,500.00	
4932-4934, 5222-5224, 6 gores and 2 full lots, at $6,500 each	13,000.00	
		436,500.00
Block No. 3:		
1st Ave. & Ave. "A," 21st Street & 22nd Street:		
1st Ave., 1272 & 1265, 2 Corners at $10,000 each	20,000.00	
1266-1271, 6 lots at $8,000 each	48,000.00	
Ave. A, 1338 & 1345, 2 Corners at $10,000 each	20,000.00	
1339-1344, 6 lots at $8,000 each	48,000.00	
21st St. 5301-5317, 17 lots at $7,000 each	119,000.00	
22nd St. 5548-5564, 17 lots at $7,000 each	118,000.00	
		374,000.00
Block No. 4:		
1st Ave. & Ave. "A," 20th St. & 21st Street:		
Ave. A, 1346 & 1354, 2 Corners at $9,000 each	18,000.00	
1347-1350, 4 lots at $8,000 each	32,000.00	
21st St. 5183-5201, & A, 19 lots at $7,000 each	133,000.00	
20th St. 4458-4479, 22 lots at $6,000 each	132,000.00	
		315,000.00
Block No. 5:		
South Side of 20th St. between Ave. "A" & 1st Ave.:		
20th St. 4829-4836, 8 lots at $6,000 each		48,000.00
Carried Forward		$1,573,500.00

8562 REAL ESTATE TRANSFERRED BY THE NEW YORK GAS LIGHT COMPANY—*Continued.*

Brought Forward		$1,573,500.00
Add for Omission:		
The Stable Building and Improvements on South Side of 20th St. Block 5	$15,000.00	
Five Dwelling Houses on Avenue "A." West Side, between 20th and 21st Streets at $3,500 each Block 4	17,500.00	
And Improvements, *i. e.*, new party wall, Corner 20th St. and Avenue "A," on lot 1354	1,000.00	33,500.00
		1,607,000.00
Bulkhead, Pier and Water Rights		*250,000.00
Hester Street and Elizabeth Street, 6 lots, 100 x 150 feet, with Office Building, Work-shops, etc.		100,000.00
Total		$1,957,000.00

* Part of these rights were transferred to the City at a price of $247,858.00.

8563 EXHIBIT "E."

REAL ESTATE TRANSFERRED BY THE METROPOLITAN GAS LIGHT COMPANY.

As at November 11, 1884.

5 lots situated at the North East Corner of Avenue A and 60th St, partly under water		$22,000.00
8 lots fronting Avenue A, on the West side, between E. 60th and 61st Streets, at $7,000		56,000.00
Add: For Corners		4,000.00
8½ lots fronting on the North side of 60th Street between 1st Avenue and Ave. A, commencing 100 feet west of Ave. A, at $4,500		38,250.00
8½ lots fronting on the South side of 61st Street, between 1st Avenue and Ave. A, commencing 100 feet West of Ave. A at $4,500		38,250.00
		158,500.00
8 lots fronting Avenue A and the West side between East 62nd and 63rd Sts. at $8,000	$64,000.00	
Add: For corners	4,000.00	
13¼ lots fronting on the South side of 63rd Street and commencing 100 feet West of Avenue A at $6,000	79,500.00	
15½ lots fronting on the North side of 62nd Street and commencing 100 feet West of Avenue A, at $5,000	76,000.00	
		*223,500.00
8 lots fronting 41st Street on the North side between 10th and 11th Avenues, commencing 100 feet East of 11th Avenue, at $6,000		48,000.00
8 lots fronting 10th Avenue on the West side from North West Corner of 65th St. to South West Corner of 66th Street at $7,000	56,000.00	
Add: For corner lots	4,000.00	
8 lots fronting 11th Avenue on the East side, commencing at the North East Corner of 65th Street and extending to the South East Corner of 66th Street at $5,000	40,000.00	
Add: For Corner lots	4,000.00	
24 lots fronting North side of 65th Street, commencing 100 feet West of 10th Avenue at $4,500	108,000.00	
24 lots fronting South side of 66th Street, commencing 100 feet West of 10th Avenue at $4,500	108,000.00	
		320,000.00
6 Inside lots fronting West side of 11th Avenue between 41st and 42nd Streets	54,000.00	
1 lot North West Corner of 11th Avenue and 41st Street	10,000.00	
1 lot South West Corner of 11th Avenue and 42d Street	15,000.00	
28 lots fronting North side of 41st Street, between 11th and 12th Avenues, commencing about 100 feet West of 11th Ave. at $6,000	168,000.00	
28 lots fronting South side 42nd St. between 11th and 12th Avenues, commencing about 100 feet West of 11th Avenue at $9,000	252,000.00	499,000.00
Carried Forward		$1,249,000.00

8564 REAL ESTATE TRANSFERRED BY THE METROPOLITAN GAS LIGHT COMPANY—*Continued.*

Brought Forward		$1,249,000.00
6 lots fronting on the North side of 42nd Street, between 11th and 12th Avenues, Commencing 100 feet West of 42nd Street at $10,000		60,000.00
8 lots fronting on the West side of 11th Ave. between 65th and 66th Sts. at $5,000	$40,000.00	
Add: For Corners	4,000.00	
17 75/100 lots, having a frontage of 199 feet 9 inches on the North side of 65th Street and 243 feet 9 inches on the South side of 66th Street, between 11th Avenue and the H. R. R. R. cut, Commencing 100 feet West of 11th Avenue at $4,000	71,000.00	
		115,000.00
16 76/100 acres of land (7 48/100 acres under water) situated on the West Shore of the Hudson River at Shady Side, Bergen County, N. J.		50,000.00
		$1,474,000.00
57 lots, bounded by the West side of 12th Avenue, the center line of 41st Street, the West side of the former 13th Avenue and the center line of 42nd Street, with water rights and grants as to wharfage, cranage, etc.		300,000.00
Total		$1,774,000.00

8565 REAL ESTATE ACQUIRED BY THE CONSOLIDATED GAS COMPANY OF NEW YORK.

From November 11, 1884, to December 31, 1905.

Property:	
2 Irving Place	$25,000.00
336 Avenue A and 612 West 45th Street	19,019.80
110th Street and 2nd Avenue	7,000.00
608, 617, 621 West 45th Street	24,875.00
606 West 45th Street, 116th Street and Lexington Avenue, 175-177 East 114th Street, 623 West 45th Street and 132nd Street and 12th Avenue	314,550.00
175 and 177 East 114th Street	24,000.00
½ Acre of Land, Shadyside, New Jersey	2,500.00
20 68/100 Lots, 98th, 99th Streets and East River	27,500.00
328-330 Avenue A and 405 East 20th Street	71,112.73
405 East 20th Street	24,250.00
222-228 West 65th Street	61,000.00
222-228 West 65th Street and new 41st Street Stable	2,500.00
11th Avenue, assumed in settlement of Debt	50,588.65
Total Property Purchased	$653,896.18
Assessments for Improvements	129,013.89
Bulkheads	384,646.97
Additions to Office Buildings, East 114th Street	62,158.57
New Shop, 66th Street	51,128.87
Sundry Expenditures	44,947.21
	$1,325,791.69
Deduct:	
Cost price of Properties sold	$582,458.00
Assessments Recovered	3,037.41
	585,495.41
Total Additions to Real Estate	$740,296.28

*Of this, $118,000.00 was sold by Consolidated Gas Company for $178,078.00.

8566 LIST OF BOOKS OF ACCOUNTS OF COMPANIES MERGED AS CONSOLIDATED GAS COMPANY OF NEW YORK.

As at November 10, 1884.

Metropolitan Gas Light Company:

*Ledgers.
*Journals.
*Cash Books.

Knickerbocker Gas Light Company:

*Ledgers.
*Journals.
*Cash Books.

Harlem Gas Light Company:

Ledgers:

Aug. 1, 1855—June 30, 1872
July 1, 1872—Feb. 5, 1885

Journals:

July 6, 1855—Dec. 31, 1862
Jan. 1, 1863—Dec. 31, 1869
Jan. 1, 1869—Nov. 13, 1872
Nov. 1, 1872—Sep. 30, 1875
Oct. 1, 1875—Nov. 30, 1878
Dec. 1, 1878—Feb. 28, 1882
Mar. 1, 1882—Apl. 15, 1885

Cash Books:

July 6, 1855—Dec. 31, 1866
Jan. 1, 1867—Sep. 30, 1872
Oct. 1, 1872—May 31, 1877
June 1, 1877—Oct. 31, 1882
Nov. 1, 1882—Mar. 31, 1883
Apl. 1, 1883—June 30, 1884

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* Missing.

8567 *Manhattan Gas Light Company:*

Ledgers:

*Feb. 1, 1835—Dec. 31, 1848
Jan. 1, 1849—June 30, 1856
July 1, 1856—Oct. 31, 1860
Jan. 1, 1861—June 30, 1864
Jan. 1, 1867—Jan. 1, 1873
Jan. 1, 1873—Dec. 31, 1878
Jan. 1, 1879—Nov. 11, 1884

Journals:

xFeb. 1, 1835—Apl. 30, 1848
May 1, 1848—Mar. 10, 1849
*Mar. 10, 1849—Apl. 30, 1852
Mar. 1, 1852—Nov. 30, 1853
Dec. 1, 1853—Apl. 30, 1855
May 1, 1855—Nov. 29, 1856
Dec. 1, 1856—June 30, 1858
June 30, 1858—Feb. 29, 1860
Mar. 1, 1860—June 30, 1861
*July 1, 1861—Nov. 30, 1871
Dec. 1, 1871—Nov. 29, 1873
Dec. 1, 1873—Apl. 30, 1876
May 1, 1876—Aug. 31, 1878
Sep. 2, 1878—Feb. 28, 1881
Mar. 1, 1881—July 31, 1883
Aug. 1, 1883—Nov. 11, 1884

Cash Books:

Municipal Gas Light Company:

Ledgers:

Jan. 1, 1877—Jan. 1, 1880
Jan. 1, 1880—June 30, 1883
July 1, 1883—June 30, 1885

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x Feb. 1, 1835—Consolidation.
* Missing.

8568 Journals:

Jan. 1, 1877—Jan. 1, 1880
Jan. 1, 1880—June 30, 1885
July 1, 1883—June.

Cash Books:

*Jan. 1, 1877—Jan. 1884
Jan. 1, 1884—Feb. 1885

New York Gas Light Company:

Ledgers:

June 2, 1823—July 31, 1833
Aug. 1, 1833—Feb. 1, 1845
Feb. 1, 1845—July 31, 1857
Aug. 1, 1857—Jan. 31, 1866
Feb. 1, 1866—May 31, 1871
June 1, 1871—June 30, 1881
July 1, 1881—Jan. 31, 1885

CITY'S EXHIBIT 89.

COMPARATIVE COST OF THE CONSOLIDATED GAS COMPANY'S MAINS IN THE STREETS OF NEW YORK CITY.

8570

Sizes	Cost per Foot for Cobble Pavement	Mr. Simpson's Affidavit Testimony, page 40 (question 65)			Map Measurements			Difference	
		Number of Feet	Total Cost	Total Cost Minus 15 per cent. Contractor's Profit	Number of Feet	Total Cost	Total Cost Minus 15 per cent. Contractor's Profit	Excess of S. Figures	Deficiency of S. Figures
1½"	No value	1,407.00							
2"	$0.925	$4,365.00	$4,037.63	$3,431.98	3,969.60	$3,671.88	$3,121.10	$310.88	—
3"	1.07	222,741.00	238,332.87	202,582.94	138,057.22	147,721.23	125,563.05	77,019.89	—
4"	1.22	557,469.00	680,112.18	578,095.25	477,561.87	582,625.48	495,231.66	82,863.59	—
5"	1.42	1,799.00	2,554.58	2,171.39	430.27	610.98	519.34	1,652.05	—
6"	1.625	2,129,088.00	3,459,768.00	2,940,802.80	1,945,509.85	3,161,453.51	2,687,235.48	253,567.32	—
8"	2.095	528,040.00	1,106,243.80	940,307.23	468,847.20	983,234.88	835,749.65	104,557.58	—
10"	2.41	71,286.00	171,799.26	146,029.37	69,635.34	167,821.17	142,647.99	3,381.38	—
12"	2.937	321,536.00	944,351.23	802,698.55	305,248.17	896,513.88	762,036.79	40,661.76	—
16"	3.78	98,901.00	373,845.78	317,768.91	82,094.15	310,315.89	263,768.50	54,000.41	—
18"	4.28	29,633.00	126,829.24	107,804.85	32,771.97	140,264.03	119,224.43	—	$11,419.58
20"	4.757	178,803.00	850,565.87	722,980.99	143,368.16	682,002.34	579,701.99	143,279.01	—
24"	5.645	45,956.00	259,421.62	220,508.38	35,391.73	58,219.40	49,486.49	171,021.89	—
30"	7.71	131,583.00	1,014,504.93	862,329.19	140,233.42	1,081,199.67	919,019.72	—	56,690.53
36"	9.695	22,242.00	215,636.19	183,290.76	19,163.95	185,794.50	157,925.32	25,365.44	—
		$4,344,849.00	$9,448,003.18	$8,030,802.59	$3,862,282.90	$8,401,448.84	$7,141,231.51	$957,681.20	$68,110.11

Difference.... $889,571.09

" ... 482,566.10 ft. or 91.39 Miles.

CITY'S EXHIBIT 90.

TABLE SHOWING THE SIZES OF THE CONSOLIDATED GAS COMPANY'S MAINS IN THE STREETS OF NEW YORK CITY.

PAGE "13-A."

Final Volumes	Sizes of the Mains Active. Lengths of Pipe in Feet Given Below.														
	1½ In.	2 In.	3 In.	4 In.	5 In.	6 In.	8 In.	10 In.	12 In.	16 In.	18 In.	20 In.	24 In.	30 In.	36 In.
1	..	255.95	24,722.57	63,604.11	430.27	302,567.25	105,006.71	688.26	70,641.23	15,610.29	2,953.20	19,901.97	11,950.75	4 353.50	..
2	..	..	17,258.40	44,350.66	..	139,381.35	32,532.11	1,715.39	13,931.21	20,895.89	11,544.20	21,283.35	10,065.59	20,589.54	5,734.26
3	..	..	19,069.47	25,185.98	..	153,392.90	34,440.10	7,465.62	32,149.99	3,687.46	9,218.76	8,581.06	3,868.23	11,005.34	500.00
4	..	..	18,496.78	16,838.06	..	203,150.67	51,424.71	18,216.48	12,233.44	11,124.02	6,459.25	12,922.37	..	9,181.50	...
5	..	..	9,323.40	47,253.47	..	178,752.71	23,126.57	18,157.74	31,194.53	6,701.25	..	16,506.91	1,342.50	14,883.70	..
6	..	..	5,963.16	46,974.93	..	120,069.52	50,171.99	7,697.61	13,383.46	1,863.75	2,596.56	11,759.20	497.66	16,672.23	..
7	..	3,713.65	11,857.61	54,942.03	..	291,835.17	36,380.48	5,975.66	28,266.11	8,210.92	..	18,826.75	..	31,125.46	7,815.14
8	..	..	17,338.59	93,711.33	..	303,445.43	72,131.82	8,927.21	42,391.00	11,164.08	..	11,125.90	5,822.42	26,064.47	4,638.75
11	..	..	6,144.35	46,304.95	..	172,055.52	27,257.57	791.37	39,156.50	2,836.49	..	15,374.98	1,844.56	6,357.68	475.80
12	..	..	7,882.89	8,396.35	..	80,859.33	36,375.14	..	21,700.70	..	..	7,085.67	..	..	..
Manh grand total		3,969.60	138,057.22	477,561.87	430.27	1,945,509.85	468,847.20	69,635.34	305,248.17	82,094.15	32,771.97	143,368.16	35,391.73	140,233.42	19,163.95
Bronx Est.						29,111.									
						1,974,620.85									

Journals:

June 2, 1823—July 19, 1828
July 19, 1828—Sep. 24, 1831
Sep. 26, 1831—July 31, 1835
*Aug. 1, 1835—June 30, 1845
Feb. 1, 1845—Apl. 30, 1852
May 1, 1852—July 31, 1857
Aug. 1, 1857—Jan. 31, 1856
Feb. 1, 1866—June 30, 1871
July 1, 1871—June 30, 1881
July 1, 1881—Jan. 31, 1885

* Missing.

8569 Cash Books:

*June 2, 1823—Oct. 31, 1835
Nov. 2, 1835—July 31, 1840
Aug. 1, 1840—Nov. 30, 1847
Dec. 1, 1847—Dec. 31, 1853
Jan. 1, 1854—Aug. 31, 1859
Sep. 1, 1859—Jan. 31, 1866
*Feb. 1, 1866—Consolidation.

Daily Cash Book:

Feb. 1, 1845—Aug. 1, 1857
Aug. 1, 1862—Apl. 30, 1875
Nov. 1, 1875—Mar. 31, 1880
May 1, 1865—Sep. 30, 1869
Oct. 1, 1869—May 31, 1871
June 3, 1871—Oct. 30, 1875

Cash Journals:

June 1, 1871—June 30, 1881
July 1, 1881—Mar. 31, 1891

Statements:

Aug. 1, 1827—Aug. 1, 1843
Feb. 1, 1844—Aug. 1, 1860
Feb. 1, 1861—May 31, 1871
June 1, 1871—Jan. 21, 1885

* Missing.

(Here follow City's Exhibits 89 and 90, marked pp. 8570 and 8571.)

8572 CITY'S EXHIBIT 91.

TABLE SHOWING THE SIZES OF THE CONSOLIDATED GAS COMPANY'S MAINS IN THE STREETS OF NEW YORK.

Page "14-A."

LENGTHS OF PIPE IN FEET GIVEN BELOW.

Sizes.	Active.	Disused.	Abandoned.	Total.
1½".....				
2".....	3,969.60	992.15	—	4,961.75
3".....	138,057.22	127,613.61	—	265,670.83
4".....	477,561.87	81,183.28	238.51	558,983.66
5".....	430.27	2,135.77	—	2,566.04
6".....	1,945,509.85	14,882.17	—	1,960,392.02
8".....	468,847.20	1,213.90	—	470,061.10
10".....	69,635.34	71.70	—	69,707.04
12".....	305,248.17	789.14	—	306,037.31
16".....	82,094.15	—	—	82,094.15
18".....	32,771.97	—	—	32,771.97
20".....	143,368.16	1,728.75	—	145,096.91
24".....	35,391.73	—	—	35,391.73
30".....	140,233.42	21.87	—	140,255.29
36".....	19,163.95	—	—	19,163.95
Total ...	3,862,282.90	230,632.34	238.51	4,093,153.75

NUMBER OF MILES OF MAINS.

Totals, Manh.....	731.49 miles	43.68	.05	775.22
Bronx.....	5.51			5.51
	737.00			
Simpson's figures	795			
Dif.	58			

8573 CITY'S EXHIBIT 91—*Continued.*

	Miles.
Active Mains, Manhattan and The Bronx.....	737.00
Disused Mains, Manhattan and The Bronx.....	43.68
Abandoned Mains, Manhattan and The Bronx.....	.05
Total, all maps	780.73

Note—Bronx St. Mains Estimate.

Page 1988 Printed Test., Exh. 85, Oct. 31, 1905, before N. Y. State Gas & El. Comm.

Bronx Mains	$47,450.37
Cost 6" main per ft. cobble pav.....	1.63
Est. length 6" main.....	2,941 ft.
Est. length 6" main.....	5,513 miles

8574 STATE'S EXHIBIT HHH.

Comparison of Candle Power, Yield and Quality of Water Gas.

21st Street Station.

	Average gravity oil.	Gallons per M.	Corrected candle power	City inspector candle power.	Loss.
January	30.0	4.78	25.14	21.24	3.90
February	29.40	4.57	24.95	20.06	4.89
March	29.97	4.45	24.84	19.91	4.93
April	33.80	4.49	25.07	21.69	3.38
May	29.53	4.51	25.50	20.41	5.09
June	29.53	4.45	26.85	23.18	3.67
July	28.38	4.83	27.72	24.61	3.11
August	28.52	4.68	24.91	23.47	1.44
September	28.80	4.70	26.20	23.23	2.97
October	29.70	4.66	26.38	23.39	2.99
November	33.11	4.62	26.69	23.61	3.08
December	34.49	4.60	26.51	23.37	3.14

44th Street Station.

January	30.40	4.81	24.85	20.53	4.35
February	29.73	4.58	24.70	20.37	4.33
March	31.58	4.62	25.82	20.38	5.44
April	34.48	4.38	23.47	21.76	1.71
May	30.08	4.40	24.14	21.58	2.56
June	29.19	4.75	26.05	23.11	2.94
July	29.01	4.95	28.06	25.21	2.85
August	29.15	4.60	26.40	24.17	2.23
September	29.49	4.74	25.88	23.18	2.80
October	29.95	4.91	25.77	23.35	2.42
November	34.25	4.78	24.51	24.29	.22
December	34.75	4.58	24.21	24.26	.05

8575 99th Street Station.

January	30.65	4.76	25.23	22.41	2.82
February	30.65	4.70	25.10	21.43	3.67
March	31.04	4.58	25.31	22.15	3.16
April	31.10	4.38	24.91	23.14	1.77
May	30.25	3.60	24.76	23.48	.68
June	29.99	3.90	26.03	21.62	5.41
July	29.18	4.51	29.10	25.81	3.29
August	29.42	4.40	26.44	25.58	.86
September	30.82	4.30	25.47	24.19	1.28
October	30.58	4.53	24.98	24.30	.68
November	33.26	4.55	24.46	24.58	.12
December	33.76	4.58	24.42	24.51	.09

8576 STATE'S EXHIBIT I. I. I., DEC. 10, 1906.

NEW AMSTERDAM GAS COMPANY—SUMMARY OF THE OPERATIONS FOR THE NOMINAL YEAR ENDING OCTOBER 31, 1905.

	Cu. ft.		
Gas made	5,102,082,000		
Less Gas made for Consolidated Gas Co. under Agency Agreement	2,178,003,000		
	Cu. ft.		
Gas made for N. A. G. Co.	2,924,079,000		
Gas sales—			
Consumers	2,660,652,800	at .9984	$2,656,292.52
Public Buildings	84,913,700	at .90	76,422.33
Blackwell's I'd Lamps	120,000	at 1.00	120.00
Street Lamps, N. Y.	4,725,900	at .7168	3,387.65
	2,750,412,400		$2,736,222.50
Miscellaneous Income			106,903.27
			$2,843,125.77

8577 STATE'S EXHIBIT I. I. I.—*Continued.*

	Quantity.	Price.	Amount.	Cost per M made.	Cost per M sold.
Generator Coal	75,289.18 Tons	$4.266	$333,395.21	.0653	.0676
Operating Expenses:					
Broken	5,075.63 "	4 426			
Boiler coal:					
B'wheat	9,906.12 "	1,873	43,448.50	.0085	.0088
Coke	1,831 "	1.40			
Coal Labor			5,079.84	.0010	.0010
Oils	23,175,882 Gals.	.040023	927,577.18	.1818	.1882
Purifiers:					
Oxide, etc.	5,020 Bus.	.12	6,122.40	.0012	.0013
Water	8,899,776 Cu. ft.	$1. M	8,899.79	.0017	.0018
Supplies (Oil, Waste & Sundries)			2,233.79	.0004	.0005
Cartage			4,376.42	.0009	.0009
Oil Tar Labor			1,142.97	.0002	.0002
Generator House Labor			33,877.09	.0066	.0069
Boiler House Labor			18,669.06	.0037	.0038
Purifier House Labor.			5,585.05	.0011	.0011
Incidental Labor			17,071.78	.0034	.0035
Superintendence			8,333.18	.0016	.0017
Repairs to Buildings			8,684.10	.0017	.0018
Repairs to Apparatus			57,445.89	.0113	.0117
Repairs to Tools & Implements			3,312.02	.0007	.0006
Works Expense			9,624.15	.0019	.0020
West Side Holder			8,474.94	.0017	.0017
East Side Holder			17,860.45	.0035	.0036
Insurance			12,867.00	.0024	.0026
			$1,534,080.81	.3006	.3113
Less Residuals:					
Tar	2,694,287 Gals.	.02	*53,885.74	*.0105	*.0109
			$1,480,195.07	.2901	.3004

8578 CITY'S EXHIBIT 81.

THIS INDENTURE made this twenty-second day of June in the year of our Lord One thousand eight hundred and forty-eight between the Mayor, Aldermen and Commonalty of the City of New York, of the first part and Hezekiah Bradford of said city of New York of the second part.

WITNESSETH that the said party of the first part for and in consideration of the sum of nine thousand dollars lawful money of the United States of America to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, released and conveyed, and by these presents do grant, bargain, sell, alien, release and convey unto said party of the second part, and to his heirs and assigns all that certain water lot, vacant ground and soil under water to be made land and gained out of the East River or Harbor of New York, situate, lying and being in the eighteenth Ward of the City of New York, commencing and containing as follows, that is to say BEGINNING at a point on the former high water line where the same is intersected by the line of the centre of fourteenth street, running thence southeasterly along the line of the centre of Fourteenth Street, one thousand nine hundred and fifty-six feet to the easterly side of Tompkins street as established, by law. Thence northerly along the easterly side of Tompkins street one thousand four hundred and sixty-nine feet four inches to the southeasterly corner of land granted by the parties of the first part to John Flack and Nicholas Gouverneur, by deed bearing date the first of August one thousand eight hundred and twenty-five, thence westerly

8579 along the southerly side of said lands made to Flack and Gouverneur, as aforesaid, one thousand three hundred and forty-five feet to the former high water line, thence southerly along the former high water line, thirty-three feet to the northwesterly corner of a certain piece of land granted by the party of the first part to Nicholas W. Stuyvesant, by deed bearing the date of the seventh day of March one thousand eight hundred and ten, now belonging to the party of the second part, thence easterly along the northerly side of land made to Stuyvesant and now belonging to the party of the second part, as aforesaid, five hundred and forty feet, thence southerly along the easterly end of said land made to Stuyvesant and now belonging to the party of the second part, as aforesaid, one hundred and ninety feet, thence westerly along the southerly side of said land made to Stuyvesant and now belonging to the party of the second part, as aforesaid, five hundred and forty feet to the former high water line, thence southerly along the former high water line to the point of Beginning.

Excepting, however so much of the above described premises as is required for the streets hereinafter mentioned to be made by the party of the second part, which said streets by a map or survey made by John I. Serrill, City Surveyor, dated New York May fifteenth, One thousand eight hundred and forty-eight hereunto annexed and which is to be deemed a part of this conveyance will more fully appear.

TOGETHER with all and singular the privileges, advantages, hereditaments and appurtenances to the same belonging or in anywise appertaining, and also all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part of, in and to the said premises and every part and parcel
8580 thereof with the appurtenances.

TO HAVE AND TO HOLD the said premises hereby granted with the appurtenances unto the said party of the second part, his heirs and assigns to his and their own proper use, benefit and behoof forever.

AND the said party of the second part for himself and his heirs and assigns does hereby covenant and agree to and with the said parties of the first part, their successors and assigns, that the said party of the second part his heirs and assigns shall and will within three months next after he or they shall be thereunto required by the said parties of the first part, or their successors, but not until he or them shall be thereunto required, at his or their own proper cost and charges, build, erect, make and finish, or cause to be built, erected, made and finished, according to any resolution or ordinance of said parties of the first part, or their successors, already passed or adopted, or that may be hereafter passed or adopted a good and sufficient firm bulkhead, wharf, avenue or street fifty feet in width along the whole of the southwesterly side of the premises hereby granted and extending to the permanent exterior line of said city being the northeasterly one-half part of Fourteenth street. Also one other good and sufficient firm bulkhead, wharf, avenue or street extending from the southerly side of land granted to Flack and Gouverneur, as aforesaid, to the northerly side of land granted to N. W. Stuyvesant, as aforesaid, and now belonging to the party of the second part, and forming and intending to form a portion of Fifteenth street. Also one other good and sufficient firm bulkhead, wharf, avenue or street, sixty feet in width, extending from
8581 the southerly side of land granted to Stuyvesant, as aforesaid and now belonging to the party of the second part to the permanent exterior line of said city being a portion of the intended new street called Fifteenth street. Also one other good and sufficient firm bulkhead, wharf, avenue or street sixty feet in width extending from the southerly side of land granted to Flack and Gouverneur, as aforesaid, to the permanent exterior line of said city, being a portion of the intended new street called Sixteenth street. Also one other good and sufficient firm bulkhead, wharf, avenue or street sixty feet in width extending from the southerly side of land belonging to Flack and Gouverneur, as aforesaid, to the permanent exterior line of said city, being a portion of the intended new street *and* called Seventeenth street. Also one other good and sufficient firm bulkhead, wharf, avenue or street eighty feet in width extending from the middle line of Fourteenth street to land formerly belonging to Flack and Gouverneur as aforesaid, being a portion of the intended new street, called Avenue C. Also one other good and sufficient firm bulkhead, wharf, avenue or street, sixty feet in width, extending from the northeasterly side of Fourteenth street to land formerly belonging to N. W. Stuyvesant, as aforesaid. Also from the northerly side

of land belonging to N. W. Stuyvesant, as aforesaid, to the southerly side of land granted to Flack and Gouverneur as aforesaid, being portions of the intended new street called Avenue B. Also one other good and sufficient firm bulkhead, wharf, avenue or street seventy feet in width extending from the middle line of Fourteenth street to the southerly side of land formerly belonging to Flack and Gouverneur as aforesaid, being a portion of the intended new street called Tompkins street. Also one other good and sufficient firm bulkhead, wharf, avenue or street bounded northwesterly by
8582 the easterly side of Avenue C, southerly by the northerly side of Seventeenth street and easterly by the westerly side of Tompkins street. Also one other good and sufficient firm bulkhead wharf avenue or street bounded southwesterly by the northeasterly side of Fourteenth street, westerly by the westerly side of Avenue B and easterly by the westerly side of Tompkins street, which said bulkheads, wharfs, avenues or streets will more fully appear on the map hereunto annexed, and will also fill in the same with good and sufficient earth, and regulate and pave the same and also the sidewalks thereon.

AND also that the said party of the second part his heirs and assigns shall and will, from time to time, and at all times forever hereafter at his or their own proper cost, charge and expense uphold and keep in good order and repair the whole of the above described streets or avenues, which the said party of the second part hath covenanted and agreed to make, erect and build, as aforesaid, and will at all times forever hereafter obey fullfil and observe such ordinances, resolutions, orders and directions as the said parties of the first part, and their successors and assigns shall, from time to time, enact, pass or make relative thereto, and also that the said streets and avenues shall forever thereafter continue to be and remain public streets and avenues and highways for the free and common use and passage of the inhabitants of the said city, and all others passing and repassing by and through and along the same in like manner as the other public streets, avenues, bulkheads and wharfs of the said city now are and of right *out* to be, and in case default shall be made by the said party of the second part, his heirs or assigns in building, erecting, making or finishing the said bulkheads,
8583 wharves, streets and avenues as aforesaid, and fill in the same, or any part thereof, or complying with any ordinance, resolution or order of the said parties of the first part, or their successors, when they shall be required as above mentioned, then, and in that case, it shall and may be lawful for the said parties of the first part or their successors, to build, erect, make or finish the bulkheads, wharves, streets and avenues, as aforesaid, and fill in the same and regulate and pave the said street and land, and the sidewalks thereof at the proper costs and charges of the said party of the second part, his heirs and assigns and charge to and recover in an action at law from the said party of the second part his heirs or assigns the amount thereof, together with the interest thereon, and all costs and charges of the proceedings relative to the same, or to sell and dispose of the whole of the hereby granted premises, or any part thereof, at public auction for the most that can be had for the same, and in case of any

deficiency to charge with and recover from the said party of the second part his heirs and assigns the amount of such deficiency, or to adopt and pursue any legal right or remedy that the said parties of the first part and their successors now possess or enjoy under and by virtue of any act of the Legislature of the State of New York or that may hereafter be granted to the said parties of the first part and their successors, by the Legislature of the State of New York, or to enter into and upon the whole or any part of the above granted premises, and to grant the above described premises, the right of making the said bulkhead, wharves, streets and avenues, and the right of receiving the wharfage, cranage and profits arising to and from the same in every person or persons, their heirs and assigns forever.

8584 AND also that he, the said party of the second part, shall and will pay all taxes, assessments and impositions, as well ordinary as extraordinary as now are upon or shall or may be imposed or levied upon the hereby granted premises under and by virtue of any act or acts of the Congress of the United States, of the Legislature of the State of New York, or by any act ordinance or resolution of the said parties of the first part, or their successors.

AND It is hereby further covenanted and agreed by and between the parties to these presents, and the intent and meaning hereof is, that the said party of the second part, his heirs and assigns, will not build the wharves and bulkheads, avenues and streets hereinbefore mentioned, or any part thereof, or make the lands in conformity with the covenants hereinafter mentioned until permission for that purpose shall be first had and obtained from the said parties of the first part, their successors or assigns, and will not build or erect, or cause to be built or erected any wharf or pier or other obstructions into the East River in front of Tompkins street, without the permission of the said parties of the first part, their successors or assigns first had for that purpose.

AND the said parties of the first part for themselves and their successors and assigns do covenant and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the second part his heirs and assigns, observing, fulfilling and keeping all and singular the articles, covenants and agreements herein mentioned and contained and on his part to be kept and performed according to the true intent and meaning of these presents, shall and lawfully may from time to time, and at all times hereafter fully have and enjoy, take and receive and hold to his own proper

8585 use all manner of wharfage, cranage, advantages or emoluments growing or accruing by or from that part of the said exterior line of the said city lying on the easterly side of said premises fronting on the East River, EXCEPTING therefrom all such wharfage, cranage, advantages and emoluments to grow or accrue along the easterly end of the bulkhead in front of the northeasterly half of Fourteenth street, also along the easterly end of the bulkhead in front of the entire width of Fifteenth street, also along the easterly end of the bulkhead in front of the entire width of Sixteenth street, also along the easterly end of the bulkhead in front of the entire width of Seventeenth street, which shall be and hereby

are reserved for the said parties of the first part, their successors or assigns, and shall belong unto them and may be received and collected by them for their use and benefit forever.

AND it is hereby further covenanted and agreed by and between the parties to these presents and the true intent and meaning whereof is, that this present grant and every work or thing in the same contained shall not be construed or taken to be a covenant or covenants of the warranty or seizen of the said parties of the first part, or their successors, nor to operate further than to pass the estate, right, title or interest they may have or may lawfully claim by virtue of their several charters and the various acts of the people of the State of New York.

AND it is hereby further mutually understood and agreed that these presents and the estate hereby granted are upon the express condition that if, at any time hereafter, it shall appear that the said party of the second part was not on the day of the date hereof seized of a good, sure, absolute and indefeasible estate of inheritance
8586 in fee simple of and in the lands and premises on the westerly side of the premises hereby granted and adjoining the same, or if the said party of the second part, his heirs and assigns shall make default in the performance of any or either of the covenants above contained on his or their part to be observed, performed, fulfilled and kept, then, and in every such case these presents and every article, clause or thing herein contained shall be and become absolutely null and void and the said parties of the first part and their successors, shall and may forthwith thereupon enter into and upon the said premises hereby granted and shall thereafter be seized of the same with the appurtenances, full, clear and discharged of and from, any claim, right or pretence of claim, or right of the said party of the second part his heirs and assigns anything herein contained to the contrary notwithstanding.

AND the said party of the second part for himself and his heirs and assigns doth hereby covenant promise and agree to and with the said parties of the first part, their successors and assigns, that he, the said party of the second part, his heirs and assigns shall and will in all things well and faithfully comply with fulfil and perform all and every of the covenants, conditions, agreements, understandings and provisions herein contained and on their part to be kept, performed and complied with.

IN WITNESS WHEREOF to one part of these presents remaining with the said parties of the first part, the said party of the second part hath affixed his hand and seal to the other part remaining with the said party of the second part, and the said parties of the first part have caused the common seal of the City of New York
8587 to be affixed the day and year first above written.

HEZEKIAH BRADFORD. [L. S.]

Signed and Sealed and Delivered in Presence of

—— ——.

The word June on the first line of this grant written on an erasure before execution.

AUG. KIMBALL,
Clerk to the Compr.
JOHN I. SERRELL.

8588 CITY'S EXHIBIT 82.

THIS INDENTURE made this first day of May in the year one thousand eight hundred and fifty between The Mayor, Aldermen and Commonalty of the City of New York of the first part and JOHN I. V. WESTERVELT of said city of the second part WITNESSETH that the said parties of the first part for and in consideration of the sum of one thousand eight hundred and fifty dollars and seventy-five cents lawful money of the United States of America to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged HAVE granted bargained sold aliened released and conveyed and by these presents do grant bargain sell alien release and convey unto the said party of the second part and to his heirs and assigns ALL that certain WATER LOT vacant ground and soil under water to be made land and gained out of Hudson on North River or Harbor of New York situate lying and being in the Nineteenth Ward of the City of New York described and containing as follows that is to say BEGINNING at a point formed by the intersection of a right line drawn lengthwise through the center of Forty-fourth Street with the line of high water mark on the easterly shore of the Hudson River as shown on the map hereto annexed which is to be deemed a part of this conv-yance and running thence westerly along said first mentioned line eight hundred and sixty-six feet four inches to the exterior line of the (13) Thirteenth Avenue which is the permanent exterior line of said city and said river, thence northerly along said last mentioned line two hundred and sixty-one feet eight inches and one-half inch to the centre line of
Forty-fifth Street, thence easterly along said centre line last
8589 named and parallel with the line first above mentioned drawn lengthwise as aforesaid through the center of Forty-fourth Street eight hundred and eighty-five feet ten inches till it intersects said line of high water mark and thence southerly along said high water line to the point of beginning as particularly described designated and shown on said map be said distances and dimensions more or less saving and reserving from out of the hereby granted premises so much thereof as forms as per said map annexed parts or portions of Forty-fourth and Forty-fifth Streets and of the Twelfth and Thirteenth Avenues for the uses and purposes of public streets avenues and highways as hereinafter mentioned. TOGETHER with all and singular the privileges advantages hereditaments and appurtenances to the same belonging or in any wise appertaining AND also all the said estate right title interest property claim and demand whatsoever of the said parties of the first part of in and to the said premises and every part and parcel thereof with the appurtenances TO HAVE AND TO HOLD the said hereby granted premises with the ap-

purtenances unto the said party of the second part his heirs and assigns to his only proper use benefit and behoof forever. And the said party of the second part for himself his heirs and assigns doth hereby covenant and agree to and with the said parties of the first part their successors and assigns that the said party of the second party his heirs and assigns shall and will within three months next after he or they shall be thereunto required by the said parties of the first part or their successors at his or their own proper costs and charges build erect make and finish or cause to be built erected made and finished according to any resolution or ordinance of the said parties of the first part or their successors already passed or
8590 adopted or that may hereafter be passed or adopted four good and sufficient bulkheads wharfs avenues or streets which shall form so much and such parts of Forty-fourth and Forty-fifth Streets and of the Twelfth and Thirteenth Avenues as fall within the limits of the premises above described and are reserved as aforesaid from out thereof for public streets and will fill in the same with good and sufficient earth and regulate and pave the same and lay the sidewalks thereof. And also that the said party of the second part his heirs and assigns shall and will from time to time and at all times forever hereafter at his or their own proper costs charges and expenses uphold and keep in good order and repair the whole of those parts of the said Forty-fourth and Forty-fifth Streets and the Twelfth and Thirteenth Avenues which the said party of the second part has covenanted and agreed to make erect and build as aforesaid and will at all times forever hereafter obey fulfill and observe such ordinances resolutions order and directions as the said parties of the first part and their successors shall from time to time enact and pass or make relative thereto. And also that the said streets and avenues shall forever thereafter continue to be and remain public streets and avenues and highways for the free and common use and passage of the inhabitants of said city and all others passing and repassing by through and along the same in like manner as the other public streets avenues bulkheads and wharfs of the said city now are or lawfully ought to be. And in case default shall be made by said party of the second part his heirs and assigns in building erecting making or finishing the said bulkheads wharves streets and avenues by him or them covenanted herein to be built erected made and finished and in filling the same or any part thereof or in complying with any ordinance resolution or order of the said parties
8591 of the first part or their successors when required then and in that case it shall and may be lawful for the said parties of the first part or their successors to build erect make or finish the bulkheads wharfs streets and avenues as aforesaid and to fill in the same and to regulate and pave the same and lay the sidewalk thereof at the proper costs and charges of the said party of the second part his heirs and assigns and to charge to and recover in an action at law from the said party of the second part his heirs and assigns the amount thereof together with the interest thereon and all costs and charges, of the proceedings relative to the same or to sell and dispose of the whole of the said hereby granted premises or any part thereof at public auction for the most that can be had for the same and in

case of any deficiency to charge with and recover from the said party of the second part his heirs and assigns the amount of such deficiency or to adopt and pursue any legal right or remedy that the said parties of the first part or their successors now possess and enjoy under and by virtue of any act of the legislature of the State of New York or that may thereafter be granted unto the said parties of the first part or their successors by the legislature of the State of New York or to enter in and upon the whole or any part of the hereby granted premises and to grant the same, the right of making said bulkheads wharfs streets and avenues and the right of receiving the wharfage cranage and profits arising to and from the same to any other person *person* or persons their heirs and assigns forever AND also that the said party of the second part his heirs and assigns shall and will pay and satisfy all taxes assessments and impositions as well ordinary as extraordinary as are now or shall or may hereafter be lawfully imposed or levied upon the hereby granted premises
8592 under and by virtue of any act or acts of the Congress of the United States of America of the Legislature of the State of New York or by any act ordinance or resolution of the said parties of the first part or their successors.

AND IT IS HEREBY further covenanted and agreed by and between the parties to these presents and the true intent and meaning hereof is that the said party of the second part his heirs and assigns will not build the said wharfs bulkheads or avenues and streets hereinbefore mentioned or any part thereof or make the lands in conformity with the covenants hereinafter mentioned until permission for that purpose shall be first had and obtained from the said parties of the first part or their successors and will not build erect or cause to — built or erected any wharf or pier or other obstruction in the Hudson River in front of the Thirteenth Avenue without the permission of the said parties of the first part their successors or assigns first had for that purpose. AND the said party of the first part for themselves their successors and assigns do covenant and agree to and with the said party of the second part his heirs and assigns that he the said party of the second part his heirs and assigns observing, fulfilling and keeping all and singular the articles covenants and agreements herein mentioned and contained on their part to be kept and performed according to the true intent and meaning of these presents shall and lawfully may from time to time and at all times thereafter fully have and enjoy take and receive and hold to his own proper use all manner of wharfage cranages advantages or emoluments growing or accruing by or from that part of the said exterior line of the said city lying on the westerly side of the hereby granted premises fronting on the Hudson River excepting therefrom such wharfage cranage advantages and emoluments to grow or
8593 accure from the westerly end of the bulkhead in front of the entire width of the southerly half part of Forty-fifth Street and the northerly half part of Forty-fourth Street which shall be and are hereby reserved for the said parties of the first part their successors or assigns with full power to collect and receive the same for their own proper use and benefit forever. AND IT is hereby further

agreed by and between the parties to these presents that the true intent and meaning hereof is that this present grant and every word or thing in the same contained shall not be construed or taken to be a covenant or covenants of warranty or of seizin of said parties of the first part or their successors not to operate further than to pass the estate right title or interest which they may have or may lawfully claim in the premises hereby conveyed by virtue of their several charters and the various acts of the legislature of the People of the State of New York. And it is hereby further mutually understood and agreed and these presents and the estate hereby granted are upon the express condition that if at any time hereafter it shall appear that the said party of the second part was not on the day of the date hereof seized of a good sure absolute indefeasible estate of inheritance in fee simple of in and to the lands and premises on the easterly side of the premises hereby granted and adjoining the same that the said party of the second part his heirs and assigns shall make default in the performance of any or either of the covenants above contained on his part and behalf to be observed performed fulfilled and kept there and in every such case these presents and every article clause or thing herein contained shall be and become absolutely null and void and the said parties of the first part and their successors shall and may forthwith thereupon enter into and upon the said
8594 premises hereby granted and shall thereafter be seized of the same with the appurtenances free clear and discharged of and from any claim right or pretense of claim or right of the said party of the second part his heirs and assigns anything herein contained to the contrary notwithstanding. AND the said party of the second part for himself and his heirs and assigns doth hereby covenant and agree to and with the said parties of the first part their successors and assigns that he the said party of the second part his heirs and assigns shall and will in all things well and faithfully comply with and fulfill and perform all and every of the covenants conditions and agreements undertakings and provisions herein contained and on his part to be kept performed and complied with.

IN WITNESS WHEREOF to one part of these presents remaining with the said parties of the first part the said party of the second part hath affixed his hand and seal and to the other part thereof remaining to the said party of the second part the said parties of the first part have caused the common seal of the City of New York to be affixed the day and year above written.

JOHN I. V. WESTERVELT.

Sealed and delivered in the presence of
CHAS. W. LAWRENCE.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 20th July, 1850, before me came Charles W. Lawrence to me personally known who being duly sworn did depose and
8593 say he resided in the City of New York that he is personally acquainted with John I. V. Westervelt and knows him to be the individual described in and who executed the foregoing inden-

ture; that he became a subscribing witness to the execution of the same and said Westervelt executed the same in his presence and acknowledged to him that he executed the same for the purpose therein mentioned.

JOS. C. PINCKNEY,
Commiss. of Deeds.

CITY'S EXHIBIT 83.

Grant to J. I. V. Westervelt, 45th and 46th Streets, Eleventh and Thirteenth Avenues.

THIS INDENTURE made first day of May in the year one thousand eight hundred and fifty between The Mayor, Aldermen and Commonalty of the City of New York of the first part and John I. V. Westervelt of said City of the second part.

WITNESSETH, that the said parties of the first part for and in consideration of the sum of nine hundred and six dollars and seventy-five cents lawful money of the United States of America to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged Have granted bargained sold aliened released and conveyed and by these presents Do grant, bargain sell alien release and convey unto the said party of the second part and to his heirs and assigns ALL that certain Water Lot vacant ground and soil under water to be made land and gained out of the
8596 Hudson or North River or Harbor of New York situate lying and being in the Nineteenth Ward of the City aforesaid described and containing as follows that is to say BEGINNING at a point formed by the intersection of a right line drawn lengthwise through the centre of Forty-fifth Street with the line of high water mark on the easterly shore of the Hudson River as shown on the map hereto annexed which is to be deemed a part of this conveyance and running thence westerly along said first mentioned line eight hundred and eighty-one feet eight inches to the exterior line of the (13th) Thirteenth Avenue which is the permanent exterior line of said City in said River thence northerly along said last mentioned line one hundred and thirty feet ten inches and one-fourth of an inch to the centre line of the block bounded by Forty-fifth and Forty-sixth Streets Twelfth and Thirteenth Avenues Thence easterly along said centre line last named and parallel with the line first above mentioned drawn lengthwise as aforesaid through the centre of Forty-fifth Street nine hundred and forty-six feet eleven inches till it intersects said line of high water mark and Thence southerly along said high water line to the point of beginning as particularly described designated and shown on said map be said distances and dimensions more or less Saving and observing from and out of the hereby granted premises so much thereof as forms as per said map annexed parts or portions of Forty-fifth Street and of the Twelfth and Thirteenth Avenues for the uses and purposes of public streets, avenues and highways as hereinafter mentioned TOGETHER with all and singular the privileges advantages hereditaments and appurtenances to the

same belonging or in anywise appertaining and also all the estate right title interest property claim and demand whatsoever of the said parties of the first part of in and to the said premises and
8597 every part and parcel thereof with the appurtenances TO HAVE AND TO HOLD the said hereby granted premises with the appurtenances unto the said party of the second part his heirs and assigns and their only proper use benefit and behoof forever. AND the said party of the second part for himself his heirs and assigns doth covenant and agree to and with the said parties of the first part their successors and assigns that the said party of the second part his heirs and assigns shall and will within three months next after he shall be thereunto required by the said parties of the first part or their successors at his own proper costs and charges build erect make and finish or cause to — built erected made and finished according to any resolution or ordinance of the said parties of the first part or their successors already passed or adopted or that may hereafter be passed or adopted three good and sufficient bulkheads wharves avenues or streets which shall form so much and such parts of Forty-fifth Street and of the Twelfth and Thirteenth Avenues as fall within the limits of the premises first above described and are reserved as aforesaid from out thereof for public streets, and will fill in the same with good and sufficient earth and regulate and pave the same and lay the sidewalks thereof. AND ALSO that the said party of the second part his heirs and assigns shall and will from time to time and at all times forever hereafter at his and their own proper costs charges and expenses uphold and keep in good order and repair the whole of those parts of the said Forty-fifth Street and of the Twelfth and Thirteenth Avenues which the said party of the second part hath covenanted and agreed to make erect and build as aforesaid and will at all times forever hereafter obey fulfill and
8598 observe such ordinances resolutions orders and directions as the said parties of the first part and their successors shall from time to time enact and pass or make relative thereto. AND ALSO that the said streets and avenues shall forever thereafter continue to be and remain public streets and avenues and highways for the free and common use and passage of the inhabitants of said and all others passing and repassing by through and along the same in like manner as the other public streets avenues bulkheads and wharves of the said city now are or lawfully ought to be AND in case default shall be made by said party of the second part his heirs and assigns in building erecting making or finishing the said bulkheads wharves streets and avenues by him covenanted herein to be built erected made and finished and in filling in the same or any part thereof or in complying with any ordinance resolution or order of the said parties of the first part or their successors when required then and in that case it shall any may be lawful for the said parties of the first part or their successors to build erect make or finish the bulkheads wharves streets and avenues as aforesaid and to fill in the same and to regulate and pave the same and lay the sidewalks thereof at the proper costs and charges of the said party of the second part his heirs and assigns and to charge to and recover in an action at law from the said party of

the second part his heirs and assigns the amount thereof together with the interest thereon and all costs and charges of the proceedings relative to the same or to sell and dispose of the whole of the said hereby granted premises or any part thereof at public auction for the most that can be had for the same and in case of any deficiency to charge with and recover from the said party of the second part his heirs and assigns the amount of such deficiency or to adopt
8599 and pursue any legal right or remedy that the said parties of the first part or their successors now possess and enjoy under and by virtue of any act of the legislature of the State of New York or that may hereafter be granted unto the said party of the first part or their successors by the legislature of the State of New York or to enter in and upon the whole or any part of the hereby granted premises and to grant the same the right of making said bulkheads wharves streets and avenues and the right of receiving the wharfage cranage and profits arising to and from the same to any other person or persons their heirs and assigns forever. AND ALSO that the said party of the second part his heirs and assigns shall and will pay and satisfy all taxes assessments and impositions as well ordinary as extraordinary as are now or shall or may hereafter be lawfully imposed or levied upon the hereby granted premises under and by virtue of any act or acts of the Congress of the United States of America of the legislature of the State of New York or by any act ordinance or resolution of the said parties of the first part or their successors. AND IT IS HEREBY FURTHER covenanted and agreed by and between the parties to these presents and the true intent and meaning hereof is that the said parties of the second part his heirs and assigns will not build the said wharves bulkheads and avenues or streets hereinbefore mentioned or any part thereof or make the lands in conformity with the covenants hereinafter mentioned until permission for that purpose shall be first had and obtained from the said parties of the first part or their successors and will not build or erect or cause to be built or erected any wharf or pier or other obstruction into the Hudson River in front of the Thirteenth Avenue without the permission of the said parties of the first part their successors or
8600 assigns first had for that purpose. AND the said parties of the first part for themselves their successors and assigns do covenant and agree to and with the said party of the second part his heirs and assigns that he the said party of the second part his heirs and assigns observing fulfilling and keeping all and singular the articles covenants and agreements herein mentioned and contained on his part to be kept and performed according to the true intent and meaning of these presents shall and lawfully may from time to time and at all times hereafter fully have and enjoy take and receive and hold to his and their own proper use all manner of wharfage cranage advantages or emoluments growing or accruing by or from that part of the said exterior line of the said city lying on the westerly side of the hereby granted premises fronting on the Hudson River excepting therefrom such wharfage cranage advantages and emoluments to grow or accrue from the westerly end of the bulkhead in front of the entire width of the northerly half part of Forty-

fifth Street which shall be and are hereby reserved for the said parties of the first part their successors or assigns with full power to collect and receive the same for their own proper use and benefit forever. AND IT IS HEREBY FURTHER AGREED by and between the parties to these presents and the true intend and meaning hereof is that this present grant and every word or thing in the same contained shall not be construed or taken to be a covenant or covenants of warranty or of seizing of said parties of the first part or their successors nor to operate further than to pass the estate right title or interest they may have or may lawfully claim in the premises hereby conveyed by virtue of their several charters and the various acts of the legislature of the People of the State of New York. AND
8601 IT IS HEREBY FURTHER MUTUALLY understood and agreed and these presents and the estate hereby granted are upon the express conditions that if at any time hereafter it shall appear that the said party of the second part was not on the day of the date hereof seized of a good sure absolute and indefeasible estate of inheritance in fee simple of in and to the land and premises on the easterly side of the premises hereby granted and adjoining the same or if the said party of the second part his heirs and assigns shall make default in the performance of any or either of the covenants above contained on his or their part and behalf to be observed performed fulfilled and kept then and in every such case these presents and every article clause or thing herein contained shall be and become absolutely null and void and the said parties of the first part and their successors shall and may forthwith thereupon enter into and upon the said premises hereby granted and shall thereafter be seized of the same with the appurtenances free clear and discharged of and from any claim right or pretense of claim or right of the said party of the second part his heirs and assigns any thing herein contained to the contrary notwithstanding. AND the said party of the second part for himself and his heirs and assigns doth hereby covenant and agree to and with the said parties of the first part their successors and assigns that he the said party of the second part his heirs and assigns shall and will in all things well and faithfully comply with and fulfil and perform all and every of the covenants conditions and agreements undertakings and provisions herein contained on his or their part to be kept performed and complied with.

IN WITNESS WHEREOF to one part of these presents remaining with the said parties of the first part the said party of the
8602 second part hath affixed his hand and seal and the other part thereof remaining with the said party of the second part the said parties of the first part have caused the common seal of the City of New York to be affixed the day and year first above written.

JOHN I. V. WESTERVELT. [SEAL.]

Sealed and delivered in the presence of
CHAS. W. LAWRENCE.

CITY AND COUNTY OF NEW YORK, *ss:*

On the 20th July, 1850 before me came Charles W. Lawrence to me personally known who being duly sworn did depose and say that he resides in the City of New York that he is personally acquainted with John I. V. Westervelt and knows him to be the individual described in and who executed the foregoing indenture that he became a subscribing witness to the execution of the same and said Westervelt executed the same in his presence and acknowledged to him that he executed the same for the purpose therein mentioned.

JOS. C. PINCKNEY,
Commiss. of Deeds.

8603 CITY'S EXHIBIT 84.

Grant to F. B. Cutting and Charles C. King.

THIS INDENTURE made this eighteenth day of July in the year one thousand eight hundred and forty between The Mayor Aldermen and Commonalty of the City of New York of the first part and FRANCIS B. CUTTING and CHARLES C. KING of said City parties of the second part WITNESSETH that the said parties of the first part for and in consideration of the sum of twenty-five hundred and five dollars and seventy-five cents lawful money of the United States of America to them in hand paid by the said parties of the second part the receipt whereof is hereby acknowledged HAVE GRANTED bargained sold aliened released and conveyed and by these presents DO grant bargain sell alien release and convey unto the said parties of the second part and to their heirs and assigns all that certain water lot vacant ground and soil under water to be made land and gained out of the Hudson or North River or Harbor of New York situate lying and being in the Nineteenth Ward of the City of New York bounded described and containing as follows, that is to say: BEGINNING at a point formed by the intersection of the line of high water mark with the line of the centre of the block running lengthwise between Forty-fifth and Forty-sixth Streets and Eleventh and Twelfth Avenues and distant two hundred and forty-five feet easterly from the easterly line or side of Twelfth Avenue and running thence westerly along said centre line two hundred and forty-five foot to the easterly line or side of Twelfth Avenue thence westerly along said line continued in a right line one hundred feet to the westerly line or side of said Twelfth Avenue

8604 thence westerly along the line of the centre of the block between said Forty-fifth and Forty-sixth Street and Twelfth and Thirteenth Avenues five hundred and one feet seven inches to the easterly line or side of Thirteenth Avenue thence easterly along said line continued one hundred feet four inches to the exterior line of the Thirteenth Avenue which is the permanent exterior line of the City of New York in said Hudson or North River thence northerly along said exterior line of Thirteenth Avenue three hundred and twenty nine feet seven inches thence easterly along a line till it intersects with the easterly line or side of Thirteenth

Avenue at a point distant thirty-two feet eleven and one half inches southerly from the southerly line or side of Forty-seventh Street one hundred feet four inches thence easterly along a line five hundred and tweny-eight feet six inches till it intersects with the westerly line or side of Twelfth Avenue at a point distant thirty-two feet ten inches southerly from the southerly line or side of Forty-seventh Street thence easterly along a line running parallel with the southerly line or side of Forty-seventh Street two hundred and sixty-nine feet till it intersects with a line of high water mark thence southerly along the line of high water mark as it runs to the point or place of beginning as particularly described designated and shown on a map drawn by John J. Serrell City Surveyor dated New York, June 25th, 1850, and hereto annexed and to which reference may be had said map being considered a part of this conveyance and the premises intended to be conveyed being colored pink on said map. Saving and reserving from and out of the hereby granted premises so much thereof as the said map annexed forms part or portions of Twelfth and Thirteenth Avenues and Forty-sixth Street for the use and purposes of public streets avenues and highways as here-
8605 inafter mentioned TOGETHER with all and singular the privileges advantages hereditaments and appurtenances to the same belonging or in anywise appertaining AND also all the estate right title interest property claim and demand whatsoever of the said parties of the first part of in and to the said premises and every part and parcel thereof, with the appurtenances TO HAVE AND TO HOLD two equal undivided third parts of the said premises hereby granted to the said Francis B. Cutting his heirs and assigns and the other one undivided third part thereof to the said Charles C. King his heirs and assigns to their own proper benefit and behoof forever AND the said parties of the second part for themselves, their heirs and assigns, do hereby covenant and agree to and with the said parties of the first part their successors and assigns that the said parties of the second part their heirs and assigns shall and will within three months next after they shall be thereunto required by the said parties of the first part or their successors at their own proper costs and charges build erect make and finish or cause to be built erected made and finished according to any resolution or ordinance of the said parties of the first part or their successors already passed or adopted or that may hereafter be passed or adopted three good and sufficient bulkheads wharves avenues or streets which shall form so much and such parts of Forty-sixth Street and of the Twelfth and Thirteenth Avenues as fall within the limits of the premises first above described and are reserved as aforesaid from out thereof for public streets and will fill in the same with good and sufficient earth and regulate and pave the same and lay the sidewalks thereof and also that the said parties of the second part their heirs
8606 and assigns shall and will from time to time and at all times forever hereafter at their own proper costs charges and expenses uphold and keep in good order and repair the whole of these parts of the said Forty-sixth Street and of the Twelfth and Thirteenth Avenues which the said parties of the second part have covenanted and agreed to make erect and build as aforesaid and will at

all times forever hereafter obey fulfill and observe such ordinances resolutions orders and directions as the said parties of the first part and their successors shall from time to time enact and pass or make relative thereto. AND also that the said streets and avenues shall forever thereafter continue to be and remain public streets and avenues and highways for the free and common use and passage of the inhabitants of said city and all others passing and repassing by through and along the same in like manner as the other public streets avenues bulkheads and wharves of the said city now are or lawfully ought to be and in case default shall be made by said parties of the second part their heirs and assigns in building erecting making or finishing the said bulkheads wharves streets and avenues by them covenanted herein to be built erected made and finished and in filling the same or any part thereof or in complying with any ordinances resolution or order of the said parties of the first part or their successors when required then and in that case it shall and may be lawful for the said parties of the first part or their successors to build erect make or finish the bulkheads wharves streets and avenues as aforesaid and to fill in the same and to regulate and pave the same and to lay the sidewalks thereof at the proper costs and charges of the said parties of the second part their heirs and assigns and to charge to and recover in an action at law from the said parties of the second part their heirs and assigns the amount
8607 thereof together with the interest thereon and all costs and charges of the proceedings relative to the same or to sell and dispose of the whole of the said hereby granted premises or any part thereof at public auction for the most that can be had for the same, and in case of any deficiency to charge with and recover from the said parties of the second part their heirs and assigns the amount of such deficiency or to adopt and pursue any legal right or remedy that the said parties of the first part or their successors now possess and enjoy under and by virtue of any act of the legislature of the State of New York or that may hereafter be granted unto the said parties of the first part or their successors by the legislature of the State of New York or to enter in and upon the whole or any part of the hereby granted premises and to grant the same the right of making said bulkheads wharves streets and avenues and the right of receiving the wharfage cranage and profits arising to and from the same to any other person or persons their heirs and assigns forever. AND ALSO that the said parties of the second part their heirs and assigns shall and will pay and satisfy all taxes assessments and impositions as well ordinary as extraordinary as now are or shall or may hereafter be lawfully imposed or levied upon the hereby granted premises under and by virtue of any act or acts of the Congress of the United States of America of the legislature of the State of New York or by any act ordinance or resolution of the said parties of the first part or their successors AND IT IS HEREBY further covenanted and agreed by and between the parties to these presents and the true intent and meaning hereof is that the said parties of the second part their heirs and assigns shall not build the said
8608 wharves bulkheads and avenues or streets hereinbefore mentioned or any part thereof or make the lands in conformity

with the covenants hereinafter mentioned until permission for that purpose shall be first had and obtained from the said parties of the first part or their successors and will not build or erect or cause to be built or erected any wharf or pier or other obstruction in the Hudson River in front of the Thirteenth Avenue without the permission of the said parties of the first part their successors or assigns first had for that purpose and the said parties of the first part for themselves their successor and assigns do covenant and agree to and with the said parties of the second part their heirs and assigns that they the said parties of the second part their heirs and assigns observing fulfilling and keeping all and singular the articles covenants and agreements herein mentioned and contained on their part to be kept and performed according to the true intent and meaning of these presents shall and lawfully may from time to time and at all times hereafter fully have and enjoy take and receive and hold to their own proper use all manner of wharfage cranage advantages or emoluments growing or accruing by or from that part of the said exterior line of the said city lying on the westerly side of the hereby granted premises fronting on the Hudson River excepting therefrom such wharfage cranage advantages and emoluments to grow or accrue from the westerly end of the bulkhead in front of the entire width of Forty-sixth Street which shall be and is hereby reserved for the said parties of the first part their successors or assigns with full power to collect and receive the same for their own proper use and benefit forever. AND it is hereby further agreed by and between the parties to these presents and the true intent and meaning hereof is that this present grant and every word or thing
8609 in the same contained shall not be considered or taken to be a covenant or covenants of warranty or of seizen of said parties of the first part or their successors nor to operate further than to pass the estate right title or interest they may have or may lawfully claim in the premises hereby conveyed by virtue of their several charters and the various acts of the legislature of the People of the State of New York and it is hereby further mutually understood and agreed and these presents and the estate hereby granted are upon the express condition that if at any time hereafter it shall appear that the said parties of the second part were not on the day of the date hereof seized of a good sure absolute and indefeasible estate of inheritance in fee simple of in and to the lands and premises on the easterly side of the premises hereby granted and adjoining the same or if the said parties of the second part their heirs and assigns shall make default in the performance of any or either of the covenants above contained on their part and behalf to be observed performed fulfilled and kept then and in every such case these presents and every article clause or thing herein contained shall be and become absolutely null and void and the said parties of the first part and their successors shall and forthwith thereupon enter into and upon the said premises hereby granted and shall thereafter be seized of the same with the appurtenances free clear and discharged of and from any claim right or pretense of claim or right of the said parties of the second part their heirs and assigns anything herein

contained to the contrary notwithstanding. AND the said parties of the second part for themselves their heirs and assigns do hereby covenant and agree to and with the said parties of the first part their successors and assigns that they th- said parties of the second
8610 part their heirs and assigns shall and will in all things well and faithfully comply with and fulfil and perform all and every of the covenants conditions and agreements undertakings and provisions herein contained and on their part to be kept performed and complied with.

IN WITNESS WHEREOF to one part of these presents remaining with the said parties of the first part, the said parties of the second part have affixed their hands and seals and to the other part thereof remaining with the said parties of the second part the said parties of the first part have caused the common seal of the City of New York to be affixed the day and year first above written.

Sealed and delivered in the presence of

F. B. CUTTING. [SEAL.]
CHARLES C. KING. [SEAL.]

Note the words "or that may hereafter be passed or adopted" on the 37th line page 489 and "not" on page 491 on line 21 interlined previous to execution also word "Hereby" 30th line page 492 interlined previous to execution.

CHAS. W. LAWRENCE.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 9th August 1850 before me came Charles W. Lawrence to me personally known who being duly sworn did depose and say that he resides in the City of New York that he is personally acquainted with Francis B. Cutting and Charles C. King
8611 and knows them to be the individuals described in and who executed the foregoing instrument that he became a subscribing witness thereto and they executed the same in his presence and severally acknowledged to him that they executed the same for the purpose therein mentioned.

JOS. C. PINCKNEY,
Commissioner of Deeds, &c.

8612 CITY'S EXHIBIT 85.

THIS INDENTURE MADE this twenty-seventh day of August One thousand eight hundred and fifty-three between The Mayor Aldermen and Commonalty of the City of New York of the first part and CHARLES E. APPLEBY of the second part. WITNESSETH: That the said parties of the first part for and in consideration of the sum of Four thousand nine hundred and thirty-seven dollars and fifty cents lawful money of the United States of America to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged HAVE granted, bargained and sold released and conveyed and by these presents Do grant bargain alien release and convey unto the said party of the second part and

to his heirs and assigns ALL THAT certain water lot or vacant ground and soil under water to be made land and gained out of the Hudson or North River or Harbor of New York and bounded described and containing as follows that is to say BEGINNING at the point of intersection of the line of original high water mark with the line of the centre of Forty-first Street and running thence westerly along said centre line of said Forty-first Street about one thousand three hundred and thirty-eight feet eleven inches to the westerly line or side of the Thirteenth Avenue said westerly side of the Thirteenth Avenue being the permanent exterior line of said side as established by law, thence northerly along the westerly line or side of the Thirteenth Avenue two hundred and seventy-eight feet five and a quarter inches to a line running through the centre of Forty-second Street, thence easterly along said centre line of Forty-second Street about one thousand three hundred and twenty-five feet seven inches to the line of original high water mark and thence
8613 mainly in a southerly direction along said line of original high water mark as it winds turns and runs to the point or place of beginning particularly described designated and shown on a map hereto annexed dated New York June 1853 made by John I. Serrell City Surveyor and to which reference may be had said map being considered a part of this Indenture the premises conveyed being colored pink on said map be the said dimensions more or less SAVING and reserving from and out of the hereby granted premises so much thereof as by the said map annexed forms parts or portions of the Twelfth or Thirteenth Avenues Forty-first and Forty-second Streets for the uses and purposes of public streets avenues and highways as hereinafter mentioned TOGETHER with all and singular the privileges advantages hereditaments and appurtenances to the same belonging or in anywise appertaining AND ALSO all the estate right title and interest property claim and demand whatsoever of the said parties of the first part of in and to the said premises and every part and parcel thereof with the appurtenance TO HAVE AND TO HOLD the said premises hereby granted to the said Charles E. Appleby his heirs and assigns to his own proper use and benefit and behoof forever AND the said party of the second part for himself his heirs and assigns doth hereby covenant and agree to and with the said parties of the first part their successors and assigns that the said party of the second part his heirs and assigns shall and will within three months next after he or they shall be thereunto required by the said parties of the first part or their successors at his or their own proper costs and charges build erect make and finish or cause to be built erected made and finished according to any resolution or ordinance of the said parties of the first part or their successors already passed or adopted or that may hereafter be passed or
8614 adopted four good and sufficient bulkheads wharfs streets and avenues which shall form so much and such parts of the Twelfth and Thirteenth Avenues Forty-first and Forty-second Streets as fall within the limits of the premises above described and are reserved as aforesaid from out thereof for public street and will fill in the same with good and sufficient earth and regulate and pave the same and lay the sidewalks thereof AND ALSO that the said party

of the second part his heirs and assigns shall and will from time to time and at all times forever hereafter at his own proper costs charges and expenses uphold and keep in good order and repair the whole of these parts of the said Twelfth and Thirteenth Avenues Forty-first and Forty-second Streets which the said party of the second part hath covenanted and agreed to make erect and build as aforesaid and will at all times forever hereafter obey fulfil and observe such ordinance- resolutions orders and directions as the said parties of the first part and their successors shall from time to time enact and pass or make relative thereto AND ALSO that the said streets and avenues shall forever thereafter continue to be and remain public streets and avenues and highways for the free and common use and passage of the inhabitants of said city and all others passing and repassing by through and along the same, in like manner as the other public streets avenues bulkheads and wharfs of the said city now are or lawfully ought to be, and in case default shall be made by said party of the second part his heirs and assigns in building erecting making or finishing the said bulkheads wharfs streets and avenues by him covenanted herein to be built erected made and finished and in filling in the same or any part thereof or in complying with any ordinance resolution or order of the said parties of the first part or their successors when required, then and in that case it shall
8615 and may be lawful for the said parties of the first part or their successors to build erect make or finish the bulkheads wharves streets and avenues as aforesaid and to fill in the same and to regulate and pave the same and to lay the sidewalks thereof at the proper costs and charges of the said party of the second part his heirs and assigns and to charge to and recover in an action at law from the said party of the second part his heirs and assigns the amount thereof together with the interest thereon and all costs and charges of the proceedings relative to the same or to sell and dispose of the whole of the hereby granted premises or any part thereof at public auction for the most that can be had for the same and in case of any deficiency to charge with and recover from said party of the second part his heirs and assigns the amount of such deficiency or to adopt or pursue any legal right or remedy that the said parties of the first part or their successors now possess and enjoy under and by virtue of any act of the legislature of the State of New York or that may hereafter be granted unto the said parties of the first part or their successors by the legislature of the State of New York or to enter into and upon the whole or any part of the hereby granted premises and to grant the same and the right of making said bulkheads wharfs streets or avenues and the right of receiving the wharfage cranage and profits arising to and from the same to any other person or persons their heirs and assigns forever AND ALSO that the said party of the second part his heirs and assigns shall and will pay and satisfy all taxes assessments and impositions as well ordinary as extraordinary as are now or shall or may hereafter be lawfully imposed or levied upon the hereby granted premises under and by virtue of any act or acts of the Congress of the United States
8616 of America or of the Legislature of the State of New York or by any act ordinance or resolution of the said parties of the

first part or their successors AND it is hereby further covenanted and agreed by and between the parties of these presents and the true intent and meaning hereof is that the said party of the second part his heirs and assigns will not build the said wharfs bulkheads avenues or streets hereinbefore mentioned or any part thereof or make the lands in conformity with the covenants hereinafter mentioned until permission for that purpose shall be first had and obtained from the said parties of the first part or their successors and will not build or erect or cause to — built or erected any wharf or pier or obstruction in the Hudson River in front of the hereby granted premises without the permission of the said parties of the first part their successors or assigns first had for that purpose AND the said parties of the first part for themselves their successors and assigns do covenant and agree to and with the said party of the second part his heirs and assigns that he the said party of the second part his heirs and assigns observing fulfilling and keeping all and singular the articles covenants and agreements herein mentioned and contained on his part to be kept and performed according to the true intent and meaning of these presents shall and lawfully may from time to time and at all times hereinafter fully have and enjoy take and receive and hold to his own proper use all manner of wharfage cranage advantage or emoluments growing or accruing by or from that part of the said exterior line of the said city lying on the westerly side of the hereby granted premises fronting on the Hudson River with full power to collect and receive the same for his own proper use and benefit
8617 forever. EXCEPTING therefrom such wharfage cranage advantages and emoluments to grow or accrue from the westerly end of the bulkhead in front of the entire width of the northerly half part of Forty-first Street and the southerly half party of Forty-second Street which shall be and are hereby reserved for the said parties of the first part their successors and assigns with full power to collect and receive the same for their own proper use and benefit forever and IT IS HEREBY further agreed by and between the parties to these presents and the true intent and meaning hereof is that this present grant and every word or thing in the same contained shall not be construed or taken to be a covenant or covenants of warranty or of seizen of said parties of the first part or their successors or to operate further than to pass the estate right title or interest they may have or may lawfully claim in the premises hereby conveyed by virtue of their several charters and the various acts of the legislature of the people of the State of New York AND it is hereby further understood and agreed and these presents and the estate hereby granted are upon the express condition that if at any time hereafter it shall appear that the said party of the second part is not on the day of delivery hereof lawfully entitled to take and receive this grant as the purchaser of the rights hereto from the proprietors of the lands and premises on the easterly side of the premises hereby granted and adjoining the same or if the said party of the second part his heirs and assigns shall make default in the performance of any or either of the covenants above contained on his part and behalf to be observed performed fulfilled and kept then and in every such case these presents and every article clause or thing

herein contained shall be and become absolutely null and void and the said parties of the first part and their successors shall and
8618 may forthwith thereupon enter into and upon the said premises hereby granted and shall thereafter be seized of the same with the appurtenances free clear and discharged of and from any claim right or pretense of claim or right of the said party of the second part his heirs and assigns anything herein contained to the contrary notwithstanding AND the said party of the second part covenants and agrees the assessment and the interest due and to grow due thereon for building the sewer in Forty-second Street assessed upon the premises hereby granted and also to pay all expenses which have been incurred by the said parties of the first part for regulating the streets embraced in this grant between the high water mark and the permanent exterior line of said city AND the said party of the second part for himself his heirs and assigns doth hereby covenant and agree to and with the said parties of the first part their successors and assigns that he the said party of the second part his heirs and assigns shall and will in all things well and faithfully comply with fulfil and perform all and every of the covenants conditions and agreements undertakings and provisions herein contained and on his part to be kept performed and complied with.

IN WITNESS WHEREOF to one part of these presents remaining with the said parties of the first part the said party of the second part hath set his hand and seal and to the other part remaining with the said party of the second part the said parties of the first part have caused the common seal of the City of New York to be affixed the day and year first above written.

CHARLES EDGAR APPLEBY. [SEAL.]

8619 CITY AND COUNTY OF NEW YORK, *ss:*

On this 25th day of March, 1854, before me came Charles Edgar Appleby to me personally known to be the individual described in and who executed the foregoing indenture and acknowledged that he executed the same for the purpose therein mentioned.

AUG. PURDY,
Commissioner of Deeds.

CITY'S EXHIBIT 86.

THIS INDENTURE made the twentieth day of August one thousand eight hundred and seventy BETWEEN The Mayor, Aldermen, and Commonalty of the City of New York, parties of the first part, and The Harlem Gas Light Company, of the City of New York, parties of the second part, WITNESSETH, that the said parties of the first part, for, and in consideration of the covenants and agreements hereinafter contained, and of the sum of two thousand and eighteen & 33/100 dollars, lawful money of the United States, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, Have given, granted, bargained, sold,

aliened, remised, released, conveyed and confirmed, and by these presents, Do give, grant, bargain, sell, remise, release, convey and confirm, unto the said party of the second part, their successors and assigns forever All that certain piece or parcel of land, and land under water, in the Harlem River, situate lying and being in the City of New York, adjoining and in front of upland owned by said party of the second part, and bounded and described, as follows,

BEGINNING at a point where the original high water line
8620 of said river intersects the continuation of the centre line of One hundred and tenth Street, thence running easterly along the continuation of said centre line, One hundred and twenty (120) feet, to the exterior or Bulkhead line of the said City of New York, thence in a northerly direction along said exterior or bulkhead line, two hundred and sixty-five feet, and six inches (265 ft. & 6 inches) to the intersection of said exterior or bulkhead line with the continuation of the centre line of One hundred and eleventh Street, thence along the continuation of said centre line of One hundred and eleventh Street, in a westerly direction, one hundred and thirty-two (132) feet to the intersection thereof with the original high water line of said river, thence along said original high water line in a southerly direction, as the same winds and turns, and along the upland belonging to said party of the second part, to the intersection thereof with the said centre line of One hundred and tenth Street, at a point or place of beginning, being the premises which are delineated and colored pink upon the map or diagram hereto annexed, dated New York March 25, 1869, made by George William Smith, City Surveyor, which map is to be taken and considered as part of this indenture, SAVING AND RESERVING out of the hereby granted premises so much thereof as may form part of any street or streets, avenue or avenues, that may now or hereafter be signed, designated, or laid out through said premises, according to law, for the uses and purposes of public streets, avenues and highways, as hereinafter mentioned, or which are now in use as such, together with all and singular the tenements, hereditaments and premises thereunto belonging, or in anywise appertaining, and reversion and reversions, remainder and remainders, rents,
8621 issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said parties of the first part of, in, and to the above described premises, and every part thereof, and the appurtenances. TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, with the appurtenances, unto the said party of the second part, their successors and assigns forever. And the said party of the second part for themselves, their successors and assigns do hereby covenant and agree with the said parties of the first part, their successors and assigns, that they the said party of the second part, their successors and assigns, shall and will within three months, next after he or they shall be thereunto required by the said parties of the first part, or the Common Council of the City of New York or their successors, at their own proper costs and charges, build, erect, make and finish,

or cause to be built, erected, made, or finished according to any resolution or ordinance of the said parties of the first part, the said Common Council, or their successors already passed or adopted, or that may hereafter be passed or adopted, good and sufficient bulkheads, wharves, streets or avenues, which shall form so much and such parts of any street or streets, avenue or avenues, that may now or thereafter be designated or laid out through said premises, according to law, as fall within the limits of the premises first above described and are reserved as aforesaid from out therefrom, for public streets, and will fill in the same, with good and sufficient earth, and regulate and pave the same and lay the sidewalks thereof. AND ALSO, that the said parties of the second part, their successors and assigns shall and will, from time to time, and at all
8622 times forever thereafter, at their own proper costs, charges and expenses, uphold and keep in good order and repair all those parts of such streets, avenues and sidewalks as may now or hereafter be designated or laid out through said premises, according to law, which the said parties of the second part, have covenanted and agreed to make, erect, and build as aforesaid, and will at all times hereafter obey, fulfil and observe such ordinances, resolutions, orders and directions, as the said parties of the first part, or the said Common Council and their successors, shall from time to time pass or make relative thereto. AND ALSO, that the said streets or avenues shall forever thereafter continue to be and remain public streets and avenues, and highways for the free and common use and passage of the inhabitants of the said City of New York, and all others passing and repassing by, through and along the same in like manner as the other public streets, avenues, bulkheads and wharves of said city, now are or lawfully ought to be.

And in case default shall be made by the said party of the second part, his heirs or assigns, in building, erecting, making and finishing the said bulkheads, wharves, streets or avenues, by them covenanted herein to be built, erected, made and finished, in filling in the same, or any part thereof, or in complying with any ordinance, resolution, or order of the said parties of the first part, the said Common Council or their successors when required, then and in that case it shall and may be lawful for the said parties of the first part, or their successors, to build, erect, make, and finish, or cause to be built, erected, made and finished, the bulkheads, wharves, streets and avenues aforesaid, and to fill in the same, and to regulate and pave the same, and lay the sidewalks thereof, for and on account of and at the
8623 proper cost and charges of the said party of the second part, their successors and assigns, and to charge to and recover in an action at law, from the said party of the second part, their successors and assigns, the amount thereof together with the interest thereon, and all the costs and charges of the proceedings relative thereto, or to sell and dispose of the whole of the said hereby granted premises, or any part thereof, at public auction, for the most that can be obtained for the same. And in case of any deficiency to charge with and recover from the said party of the second part, their successors and aseigns, the amount of such deficiency, or to adopt and

pursue any legal right or remedy that the said parties of the first part, or their successors now possess or enjoy under and by virue of any act of the legislature of the State of New York, or that may hereafter be granted unto the said parties of the first part, or their successors by the legislature of the State of New York, or to enter into or upon the whole or any part of the hereby granted premises, and to grant the same and the right of making such bulkheads, wharves, streets and avenues, and the right of receiving the wharfage, cranage, fees and profits arising to and from the same, to any person, or persons, their heirs and assigns forever.

AND ALSO, that the said parties of the second part, their successors and assigns, shall and will pay and satisfy all taxes, assessments and impositions, as well ordinary as extraordinary as are now or shall or may hereafter be lawfully imposed or levied upon the hereby granted premises, under and by virtue of any act or acts of the Congress of the United States of America, or of the Legislature of the State of New York, or by any act, ordinance or resolution of the parties of the first part, the said Common Council and
8624 Board of Supervisors or their successors. AND it is hereby further covenanted and agreed by and between the parties to these presents, and the true intent and meaning of these presents is, that the said party of the second part, their successors and assigns, will not build the said wharves, bulkheads, avenues or streets hereinbefore mentioned or any part thereof or make the land in conformity with the covenants herein mentioned, until permission for that purpose shall be first had and obtained from the said parties of the first part, or their successors, and will not build or erect, or cause to be built, or erected any wharf or pier or any other obstruction in the river, in front of the hereby granted premises, without the permission of the said parties of the first part, their successors or assigns first had for that purpose.

AND the said parties of the first part, for themselves, their successors and assigns, Do covenant and agree to and with the said parties of the second part, their successors and assigns, that they the said parties of the second part, their successors and assigns observing, fulfilling and keeping all and singular the articles, covenants, and agreements herein mentioned on their part, to be kept, and performed, according to the true intent and meaning of these presents, shall and lawfully may from time to time and at all times hereafter, fully have and enjoy, take and receive and hold to their own proper use, all manner of wharfage, cranage, advantages, or emoluments, growing or accruing by or from that part of the bulkhead or pier line of the said city, lying on the easterly side of the hereby granted premises, fronting on the Harlem River, with full power to collect and receive the same, for their own use and benefit forever, EXCEPTING such wharfage, cranage, advantages and emoluments to grow or accrue from the bulkhead at the foot of and in front
8625 of One hundred and tenth, and One hundred and eleventh Streets, which shall be and are hereby reserved for the said parties of the first part, their successors and assigns, with full power to collect and receive the same, for their own proper use and benefit forever.

And it is hereby further agreed by and between the parties to these presents, and the true intent and meaning hereof is, that the present grant, and every word and thing in the same contained, shall not be construed or taken to be covenants of warranty or of seizin, of the said parties of the first part, or their successors, or to operate further than to pass the estate, right, title, or interest, they may have or may lawfully claim in the premises hereby granted and conveyed, by virtue of their several charters, and the various acts of the legislature of the State of New York.

AND it is hereby further mutually agreed and understood that these presents, and the estate hereby granted are upon the express conditions, that if the said parties of the second part are not on the day of the date hereof, seized of a good, sure, absolute and indefeasible estate of inheritance, in fee simple, of, in and to the uplands and premises hereinbefore described as belonging to them and adjoining the premises hereby intended to be conveyed, or if the said parties of the second part, their successors or assigns, shall make default in the performance of any or either of the covenants herein contained on their part and behalf to be observed, performed, fulfilled and kept, then and in such case, these presents and every article, clause or thing herein contained, shall be and become absolutely null and void, and the said parties of the first part, their successors and assigns shall and may forthwith enter into and
8626 upon the said premises hereby granted, shall thereafter be seized of the same with the appurtenances free, clear and discharged of and from all claims or right, or pretense of claim or right of the said parties of the second part, their successors and assigns, anything herein contained to the contrary notwithstanding.

The said parties of the second part, for themselves, their successors and assigns DO hereby covenant and agree to and with the said parties of the first part, their successors and assigns, that they, the said parties of the second part, their successors and assigns, shall and will in all things, well and faithfully comply with, fulfill and perform all and every the covenants, conditions and agreements, undertakings and provisions herein contained, and on their part to be kept, performed, and comp-ied with.

IN WITNESS WHEREBY to one part of these presents, remaining with the said party of the second part, the said parties of the first part, have caused their common seal to be attached, and to the other part thereof, remaining with the said parties of the first part, the said parties of the second part, have affixed their seal, the day and year first above written.

(Stamp)

HENRY P. McGOWN, *President.* [SEAL.]

STATE OF NEW YORK, *City and County of New York, ss:*

On this 20th day of August, 1870, before me came, Henry P. McGown to me personally known who being by me duly sworn did depose and say that he resides in the City and County of New York, that he is the President of The Harlem Gas Light Company,
8627 that the seal affixed to the foregoing instrument is the seal of the Harlem Gas Light Company and was so affixed by au-

thority of a resolution of the Board of Directors of such Company, and that he signed his name thereto by virtue of like authority.

G. W. LAWRENCE.

Notary Public, City and County of New York.

8628 CITY'S EXHIBIT 80A.

Approved papers, Board of Aldermen, Volume 27, Page 445.

RESOLVED that the surveys and maps of the Exterior street along the shore of the Harlem river from Eighty-ninth street to the Hudson river at Spuyten Duyvil Creek, prepared by H. L. Southard, and herewith accompanying be and the same hereby are approved and confirmed, pursuant to the provisions of the Act of the Legislature, entitled

"An Act to establish a permanent exterior street in The City of New York along the shore of the Harlem river from the East river or Sound to the North river, passed April 14, 1852."

Adopted by the Board of Aldermen, September 26, 1859.
Adopted by the Board of Councilmen, October 20, 1859.
Approved by the Mayor, October 29, 1859."

8629 CITY'S EXHIBIT 122.

Grant, Dated January 6, 1883.

THE STATE OF NEW JERSEY
TO
THE METROPOLITAN GAS LIGHT COMPANY OF THE CITY OF NEW YORK.

The State of New Jersey to all to Whom These Presents shall Come or may Concern, Greeting:

Whereas, pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled "A further supplement to an Act entitled 'An Act to ascertain the rights of the State and of Riparian Owners in the lands lying under the Waters of the Bay of New York and elsewhere in this State,'" approved April eleventh, one thousand eight hundred and sixty-four, The Metropolitan Gas Light Company of the City of New York, a corporation of the State of New York, being the owner of lands fronting on the Hudson River, in the State of New Jersey, where the tide ebbs and flows thereon, and so is said riparian owner on tide waters in this State, and desirous of obtaining a grant from the said State of the lands under water hereinafter mentioned, which lie in front of *his* said lands, did apply to the Commissioners, to wit: Thomas McKeon, Bennington F. Randolph, Amzi Dodd and Gershom Mott, and to the Governor of said State, for a grant of the lands hereinafter conveyed: And Whereas, the said Commissioners, having due regard to the interests of navigation, have agreed to grant the land hereinafter mentioned and determined that seven thousand two hundred and ninety-one dollars and
8630 thirty-five cents is a proper compensation to be paid to the State for the lands hereinafter conveyed: NOW THERE-

FORE, the said State of New Jersey by Thomas McKeen, Bennington F. Randolph, Amzi Dodd and Gershom Mott, Commissioners aforesaid, the said Governor concurring, in consideration of the premises aforesaid, and of the said sum of seven thousand two hundred and ninety-one dollars and thirty-five cents, duly paid — the said The Metropolitan Gas Light Company of the City of New York, to the said State, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said "The Metropolitan Gas Light Company of the City of New York, and to its successors and assigns forever,

ALL that parcel of land flowed by tide water, lying at Shady Side in the County of Bergen and State of New Jersey, described as follows: Beginning at a point in the high water mark of the westerly shore of the Hudson River, where the same is intersected by the division line between lands of Ezra Miller and lands of the said The Metropolitan Gas Light Company of the City of New York, and from thence running South fifty-four degrees and thirty minutes East six hundred and sixty-nine and four tenths feet to the new exterior line for solid filling established Dec. 11," 1875, by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11, A. D. 1864, and the supplements thereto; thence along said new exterior line for solid filling, South thirty-five degrees and thirty minutes West four hundred and eighty-six and nine one-hundredths feet; thence North fifty-four degrees and thirty minutes West six hundred and seventy and sixty-seven one
8631 hundredths feet to high water mark of the westerly shore of the Hudson River where the same is intersected by the division line between land of Isaac P. Smith, formerly —— Melville, and lands of the said The Metropolitan Gas Light Company of the City of New York; thence Northeasterly, along said high water mark to the place of beginning. With the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lies under tide water, by filling in or otherwise improving the same, and to appropriate the lands above described to its exclusive private uses.

And also, all and singular the lands under water lying between the exterior line for solid filling, and the exterior line for piers, as fixed by the Commissioners appointed under the authority of the act aforesaid and the supplements thereto, and bounded by the northerly and southerly lines of the above described tract extended easterly to said pier line, with the right, liberty, privilege and franchise of building piers alone upon the lands last above conveyed, that is to say that which lies between the exterior lines already fixed and above mentioned. And if and when said exterior lines shall be fixed at any other points or places further out into said River, also any and all lands under water lying between the present exterior lines above described and the new exterior line or lines that may be hereafter fixed, the same to be used for solid filling and for piers respectively, agreeably to the terms of such extension.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, and all the rights of the State in said

lands. TO HAVE AND TO HOLD all and singular the above granted and described lands covered with water, and prem-
8632 ises, unto the said The Metropolitan Gas Light Company of the City of New York, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said State has caused these presents to be sealed with the Great Seal of the said State and to be subscribed by George C. Ludlow, the Governor of said State, and the said Commissioners and attested by Henry C. Kelsey, the Secretary of State thereof, this sixth day of January in the year one thousand eight hundred and eighty-three.

G. C. LUDLOW, *Gov.*
THOS. McKEEN,
[SEAL.] BENNINGTON F. RANDOLPH.
AMZI DODD.
GERSHOM MOTT.

Attest:
HENRY C. KELSEY,
Secretary of State.

Witness:
R. C. BACOT.

STATE OF NEW JERSEY, *Hudson County, ss:*

Be it remembered, that on this ninth day of January, eighteen hundred and eighty-three, before me, the subscriber, a Commissioner of Deeds for Hudson County, personally appeared Robert C. Bacot, of full age, who being by me duly sworn, on his oath saith that he saw Thomas McKeen, Bennington F. Randolph, Amzi Dodd, and Gersham Mott, the within named Commissioners, sign and deliver the within deed as their voluntary act, and that he, the said
8633 Robert C. Bacot thereupon subscribed his name as an attesting witness thereto.

R. C. BACOT.
SAM'L TAYLOR, *Clk.*

Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

JOHN V. BACOT,
Commissioner as Aforesaid.

Received in the Office & Recorded January 17." 1883 @ 3 P. M.

STATE OF NEW JERSEY, *County of Bergen, ss:*

I, JOHN R. RAMSEY, Clerk of the County of Bergen in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the record of the Deed hereto annexed, with the original record thereof in Liber G-11 of Deeds at pages 668, &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this fourth day of December, one thousand nine hundred and six.

JOHN R. RAMSEY, *Clerk,*
By W. S. DAUM, O. K.

8634 CITY'S EXHIBIT 121.

Deed, Dated November 18th, 1882.

EVERETT PEPPENELL WHEELER and LYDIA L., His Wife; MARY HANNAH SMITH and Reverend CORNELIUS B. SMITH, Her Husband, and said EVERETT PEPPENELL WHEELER and MARY HANNAH SMITH, Individually and Heirs at Law of David Everett Wheeler,

TO

THE METROPOLITAN GAS LIGHT COMPANY OF THE CITY OF NEW YORK.

THIS INDENTURE, made the eighteenth day of November, in the year one thousand eight hundred and eighty-two, Between Everett Peppenell Wheeler and Lydia L., his wife, and Mary Hannah Smith and the Reverend Cornelius B. Smith, her husband, (the said Everett Peppenell Wheeler and Mary Hannah Smith as well individually and as children and heirs at law of David Everett Wheeler, late of the City of New York, Counsellor at law, deceased, as devisees under his last Will and Testament) parties of the first part; And The Metropolitan Gas Light Company of the City of New York, party of the second part; WITNESSETH, that the said Everett Peppenell Wheeler, Mary Hannah Smith and Cornelius B. Smith, three of the parties of the first part, by virtue of the power and authority to them given in and by the said last Will and
8635 Testament, and for and in consideration of the sum of eighteen thousand five hundred and sixty dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, its successors, heirs, executors and administrators, forever released and discharged from the same by these presents have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to its successors heirs and assigns forever.

ALL that certain piece or parcel of land situate, lying and being on the west bank of the Hudson River, in the Township of Ridgefield, County of Bergen, and State of New Jersey, bounded and described as follows: Beginning at the northwest corner of a parcel of land now occupied by William Hennen, being the southwest corner of that certain parcel of land marked No. 6, on a certain Map of the Estate of Samuel Ellis, deceased, on file in the Office of the Surrogate of Bergen County, and running thence along the division fence between said land of William Hennen and said parcel No. 6, and through the centre line of the ditch, in a continuation of said partition fence, and along the dividing line between the premises hereby conveyed, or intended so to be, and the lot marked No. 5, on said Map, in a southeasterly direction, 13 chains, more or less, to the Hudson River; thence Northerly, along the said River, 495 feet, more or less, to the centre line of another ditch dividing the parcel of land hereby conveyed from the parcel of land now occu-

pied by the heirs of Hannah Ellis Miller, being Parcel No.
8636 4 on said Map; thence through the centre of said ditch and along the dividing line between the premises hereby conveyed, or intended so to be, and the lot marked No. 4 on said Map, and in a northwesterly direction, 10 chains and fifty links, more or less, to the road leading from Bull's Ferry to Fort Lee; thence along said road in a Southwesterly direction, 8 chains and 60 links, more or less, to the point or place of beginning.

Being the same premises conveyed to the late David E. Wheeler by two separate deeds of conveyance, one from William Henry Kemp and wife, recorded in the Clerk's Office of the County of Bergen, May 4th, 1858, in Liber F-5 of Deeds, page 270, and the other from Stephen D. Vreeland and wife, dated November 15, 1854, and recorded in said Clerk's Office in Liber U-4 of Deeds, page 500, &c.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, its successors, heirs and assigns, to its and their own proper use, benefit and behoof forever. And the said Everett Peppenell Wheeler and Mary Hannah Smith, two of the parties of the first part, for themselves, their heirs, executors and administrators, do jointly and severally covenant, grant and agree to and with the said party
8637 of the second part, its successors, heirs and assigns, that they, at the time of the sealing and delivery of these presents, have good right, full power and lawful authority to grant, bargain, sell and convey the above granted and described premises with the appurtenances, in manner and form aforesaid, and that the said party of the second part, its successors, heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature and kind soever. And also, that the said parties of the first part and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted premises, by, from, under or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, its successors, heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and

assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, its successors, heirs and assigns forever, as by the said party of the second part, its successors, heirs or assigns, or its or their counsel learned in the law, shall be
8638 reasonably devised, advised or required. And the said Everett Peppenell Wheeler and Mary Hannah Smith, two of the parties of the first part, for themselves, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, its successors, heirs and assigns, against the said parties of the first part, their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by those presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of

EVERETT P. WHEELER. [L. S.]
LYDIA L. WHEELER. [L. S.]
MARY H. SMITH. [L. S.]
CORNELIUS B. SMITH. [L. S.]

On the second page the ninth and tenth, fifteenth and sixteenth lines and the words "the said" on the thirteenth line, and the word "lawfully" on the fourteenth line, and part of the seventeenth line, and the word "same" on the eighteenth line, obliterated, and the words "above granted and described premises" with the appurtenances, between the seventeenth and eighteenth lines interlined, all done before execution.

HENRY C. FREEMAN.

8639 STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered, that on this 21st day of November, A. D. one thousand eight hundred and eighty-two, before me, Henry C. Freeman, a Commissioner of Deeds for the State of New Jersey, residing in the City of New York, duly appointed and qualified, personally came Everett Peppenell Wheeler and Lydia L., his wife, Mary Hannah Smith and the Rev. Cornelius B. Smith, her husband, who I am satisfied are the grantors in the within Indenture named, and I having first made known to them the contents thereof, they did severally thereupon acknowledge that they signed, sealed and delivered the same as their, and each of their free and voluntary act and deed, for the uses and purposes therein expressed; and the said Lydia L. Wheeler and Mary Hannah Smith, on a private examination by me made separate and apart from their said husbands, did further severally acknowledge that they signed, sealed and delivered the same as their, and each of their, free and voluntary act and deed, for the uses and purposes therein expressed; and the said Lydia L. Wheeler and Mary Hannah Smith, on a private examination by me made separate and apart from their said husbands, did

further severally acknowledge that they signed, sealed and delivered the same as their and each of their voluntary act and deed, freely and without any fear, threats or compulsion of or from their said husbands.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL.] HENRY C. FREEMAN,
A Commissioner for the State of New Jersey, Residing in New York City.

8640 Received in the Office and Recorded November 29th, 1882, at 1 P. M.

SAM'L TAYLOR, *Clk.*

STATE OF NEW JERSEY, *County of Bergen, ss:*

I, John R. Ramsey, Clerk of the County of Bergen in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the record of the Deed hereto annexed, with the original record thereof in Liber H-11 of Deeds, at pages 44, &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts, and County at Hack-
[SEAL.] ensack, aforesaid, this fourth day of December, one thousand nine hundred and six.

JOHN R. RAMSEY, *C.*
By W. S. DORRIN, *Dp. C.*

8641 CITY'S EXHIBIT 102.

PAGE 1A.

TABLE SHOWING THE SIZES OF THE CONSOLIDATED GAS COMPANY'S MAINS IN THE STREETS OF NEW YORK CITY.

Number of mains to a block.	Number of blocks.	Number of blocks with two or more mains. Per cent.
2	1815	30.2
3	548	9.1
4	235	3.9
5	47	.75
6	2	.0
		43.9
Total number of blocks with two or more Mains.....	2647	
Total number of blocks with one main.....	3353	56.1
Total number of blocks in New York City.....	6000	100.0

8642 STATE'S EXHIBIT A. A. A.

EXHIBIT 21.

CENTRAL UNION GAS COMPANY.

Summary of Business for Twelve Months Ending October 31, 1905.

READ ON BEHALF OF COMPLAINANTS.

	cu. ft.		
Gas made	1,596,410,000		
Gas Mfg'd under Agency Agreement	508,017,700		
	cu. ft.		
Gas made for Central Union Gas Co	1,088,392,300		
Sales: Consumers	1,017,454,000	$1,017,453.95	
Lamps	486,300	917.12	
Public Buildings	9,960,800	8,964.72	
	1,027,901,100	$1,027,335.49	
			$1,027,335.79
Income: Miscellaneous			17,092.25
From Investments			38,000.00
			$1,082,428.04

Operating:		Cost per M made.	Cost per M sold.
Caking Coal, 63,599 tons at $3.262	$207,495.08	.1300	.1396
Anth. Coal, 6,217.8 tons at $4,388	27,286.35	.0171	.0184
Cartage and Labor Handling	24,844 84	.0156	.0167
Gas Oil, 4,894,056 gals. at .04042	197,852.09	.1239	.1332
	$457,478.36	.2866	.3079
Less Residuals: Coke, Tar, Sulphate	202,363.98	.1268	.1362
	$255,114.38	.1598	.1717
Coke Used, 11,851 tons at $3,375	40,007.61	.0251	.0269
Oxide	1,912.85	.0012	.0013
Water, 5,246,870 cu. ft. $1.00	5,246.87	.0033	.0035
Oil, Waste, etc	6,835.74	.0043	.0046
Labor	63,551.03	.0397	.0428
Repairs	50,679.86	.0317	.0341
Gas Bought	1,014.68	.0006	.0007
	$424,343.02	.2657	.2856

(Here follows City's Exhibit 63, marked p. 8643.)

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

8644 STATE'S EXHIBIT JJJ.

Mr. G. E. Cowperthwait, Sec. & Supt., Danbury & Bethel Gas & Elec. Light Co., Danbury, Conn.

DEAR SIR:

Your letter of Aug. 8th to the Williamsport Gas Co., Pa., has been mailed me for reply.

I am very sorry that an error of this kind could occur in my office. There is no explanation as to the difference in the price to be made, other than Danbury, Conn., takes an entirely different rate of freight from Williamsport, Pa. Furthermore, petroleum products are priced against the crude market ruling at the time the prices are made. These prices are always subject to change without notice.

I think if you will inquire into the matter of prices prevailing in your territory, you will find that your company is favorably treated. In fact, Mr. Cowperthwait, I have reason to know you have this information at hand, and that you understand that the price at Danbury is not out of line with the costs of that delivery.

Yours very truly,

C. M. HIGGINS.

8645 STATE'S EXHIBIT MMM.

CONSOLIDATED GAS COMPANY,

21ST STREET STATION, FEBRUARY, 1902.

	Gas made M.	C. P. at station.	Gas oil used.	Specific gravity.	Gal. per M.
1,	16233	25.36	69821		4.45
2,	16649	24.76	81007	30	5.03
3,	16473	25.10	79397	30	5.00
4,	14654	24.85	70793		5.02
5,	11169	25.73	48808	29	4.60
6,	15602	25.14	68741		4.57
7,	16047	24.48	77789		5.02
8,	15730	24.88	67346	29.5	4.44
9,	14917	25.24	69441		4.84
0,	15179	25.33	66092	29	4.52
,	13785	24.98	59955		4.53
2,	9284	24.52	37717	29.5	4.32
3,	13715	23.84	63055		4.79
4,	16907	25.27	76884		4.70
15,	16001	25.05	71113	29.5	4.60
16,	15247	25.10	71130	29.5	4.84
17,	14578	24.75	62174	29	4.43
18,	12542	24.09	65636		5.45
19,	11055	25.09	48953	29.5	4.65
20,	14282	25.74	65513		4.78
21,	15094	26.16	61113		4.20
22,	12272	25.11	49481	29.5	4.21
23,	15607	24.87	38860		4.39
24,	14552	24.58	61090		4.35
25,	11850	24.41	47528		4.20
26,	10864	24.69	50318	29.5	4.87
27,	14001	24.70	61487		4.57
28,	15715	24.88	64790	29	4.26
	400007	24.95	1756027		4.57

8646 STATE'S EXHIBIT NNN FOR IDENTIFICATION.

CONSOLIDATED GAS COMPANY,

21ST STREET STATION, DECEMBER, 1904.

	Gas made M.	C. P. at station.	Gas oil used.	Specific gravity.	Gal. per M.
1,	17553	24.38	73501	29	4.30
2,	16630	24.91	77263		4.79
3,	14416	24.49	68183		4.89
4,	11945	24.03	56480	29.5	4.95
5,	17154	24.25	75595	29.5	4.55
6,	16060	24.11	74814		4.82
7,	16647	24.37	71014		4.40
8,	16599	23.75	74027		4.60
9,	16650	23.61	78562	29.5	4.87
10,	16032	23.59	78618	29.5	5.07
11,	12537	24.42	59370	32	4.94
12,	16646	25.68	74297	31	4.61
13,	16202	25.09	74034		4.72
14,	15763	25.77	72917	31	4.80
15,	17934	24.63	79533	31	5.59
16,	16643	24.90	77576		4.82
17,	14829	24.31	67860		4.74
18,	11386	24.82	55771	30	5.15
19,	15798	25.48	77200		5.06
20,	16917	25.17	80414		4.92
21,	16806	25.12	79306	30	4.89
22,	17080	24.44	80592		4.88
23,	17413	25.37	78439	30	4.66
24,	15613	24.34	72415		4.79
25,	11528	23.83	53539		4.86
26,	12539	25.48	59617		4.99
27,	17384	25.98	79974	30	4.76
28,	16533	25.99	77193		5.16
29,	17092	25.62	61760		4.87
30,	15644	25.93	77871	29.75	5.16
31,	13989	25.85	64445	30	4.80
	406366	24.83	2232181		4.77

8647 STATE'S EXHIBIT OOO FOR IDENTIFICATION.

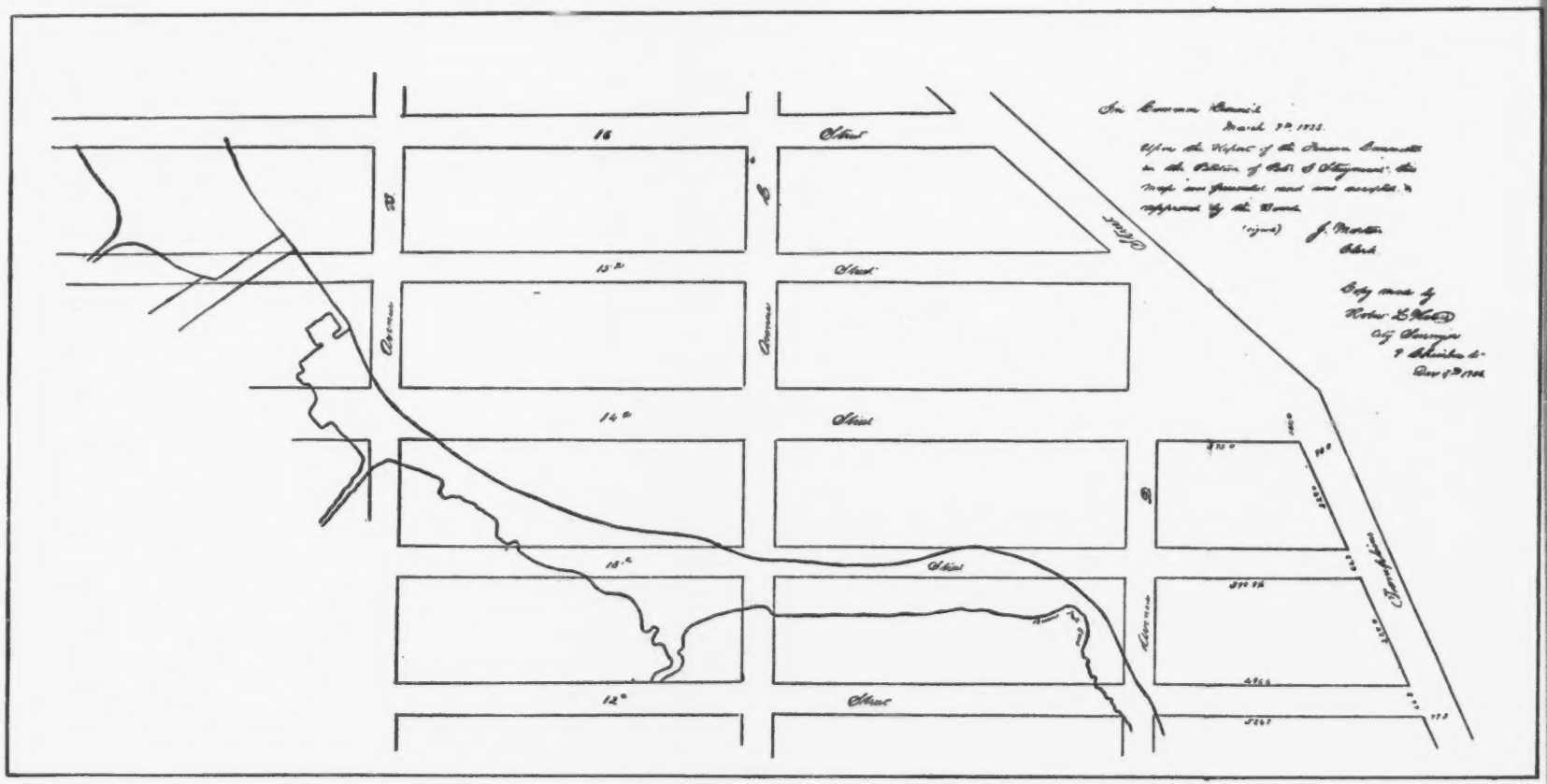
CONSOLIDATED GAS COMPANY,

21ST STREET STATION, DECEMBER, 1902.

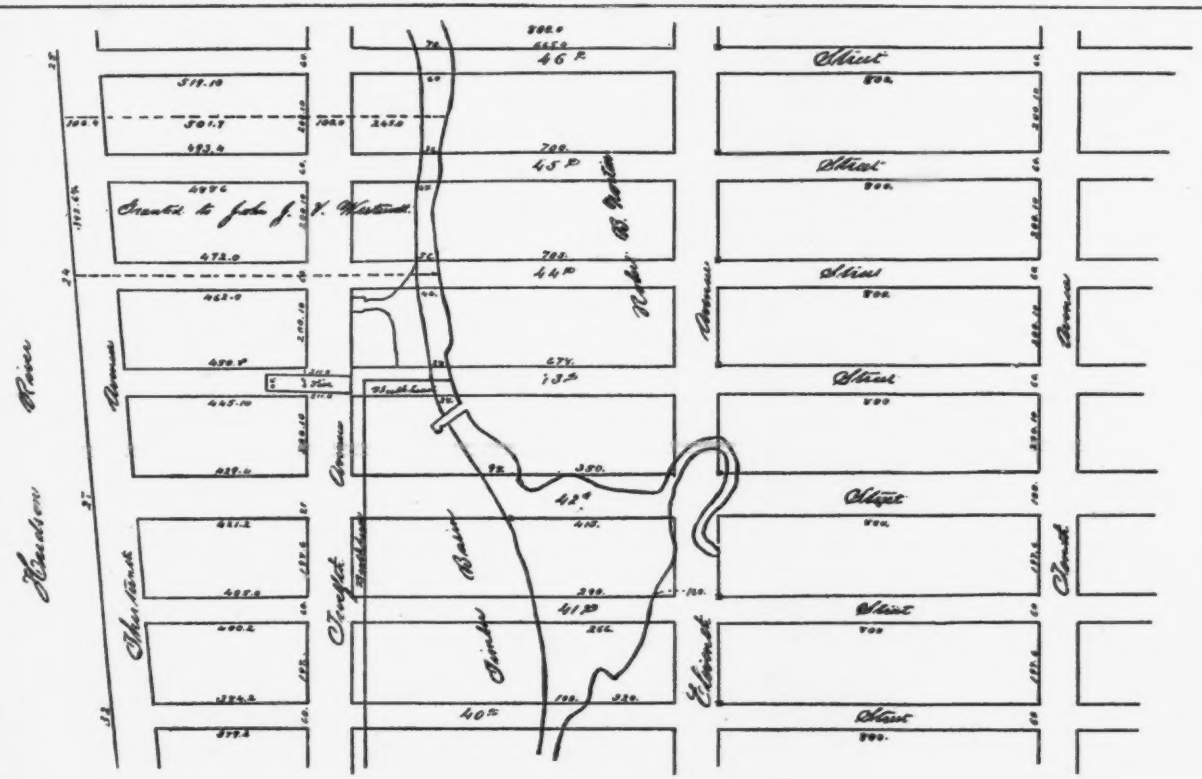
	Gas made M.	C. P. at station.	Gas oil used.	Specific gravity.	Gal. per M.
1,	13165	26.45	63418		5.92
2,	13039	26.74	63161		5.04
3,	13057	25.68	65806	38	5.07
4,	14363	23.60	70135		5.07
5,	14324	23.02	71322		5.17
6,	12872	24.44	63011	37	5.10
7,	12578	22.30	60861	37	5.05
8,	14745	20.64	73311		5.15
9,	14615	24.38	71461	37	5.07
10,	14203	27.29	70211	37	5.13
11,	14059	26.04	71811		5.30
12,	12934	25.49	67561	38	5.44
13,	12512	23.75	62461	38	5.21
14,	12700	23.51	60571	38	4.97
15,	13126	23.09	63111		5.00
16,	13655	24.43	61444	37	4.68
17,	13036	26.23	50787	37	4.06
18,	12325	25.87	46302		3.92
19,	12870	24.30	49027	38	3.97
20,	11980	23.48	41094		3.58
21,	11425	23.45	39836		3.64
22,	13914	23.19	50807	37	3.78
23,	14035	25.84	63411		4.68
24,	13780	23.55	63602	38	4.78
25,	12792	22.97	60683	39	4.93
26,	13281	21.96	67215	37	5.25
27,	12011	21.66	59949		5.12
28,	10709	22.09	54465	37	5.32
29,	12031	21.50	59915		5.19
30,	12752	21.44	59529	36	4.85
31,	13027	22.35	65665	37	5.23
	406366	23.89	19535338		5.00

(Here follow diagrams, &c., marked pp. 8648 to 8681.)

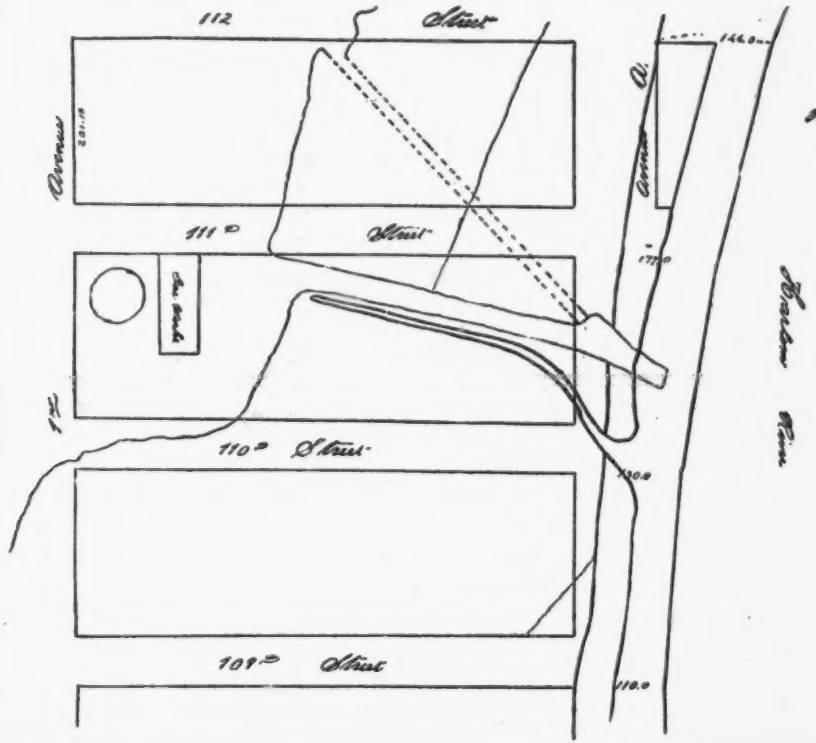
CITY'S EXHIBIT 76.



CITY'S EXHIBIT 78.


Hudson River
Riverside Drive
Riverside Drive
Riverside Drive

CITY'S EXHIBIT 80.



E. A. S.
Sept 12th 1857
Dr Comm H & K

Received Street Commissioners
Office 10th Sept 1857.
M. Lovell
Dep Dr Comm

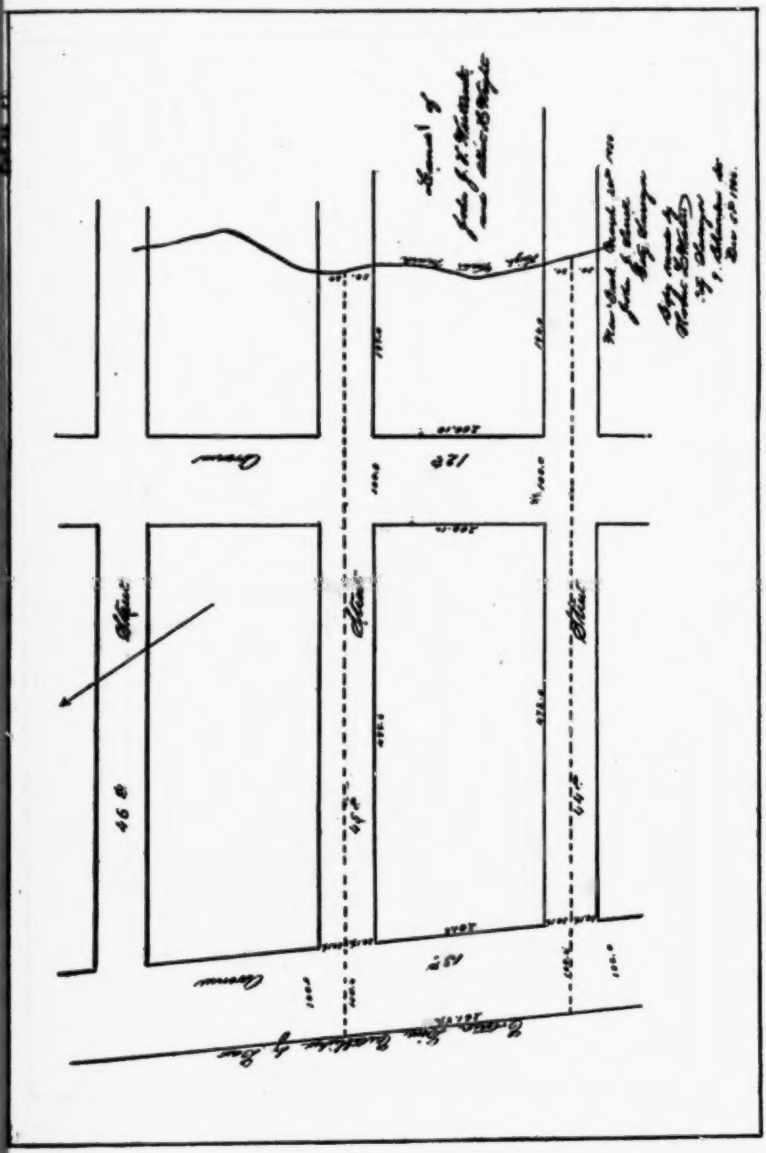
Title Page
Map
of the
Ordnance Street in the City of New York
along the
Shore of the Harlem River
from 99th Street on the East Side to West
of Harlem River
Laid down in conformity with the
Exterior Lines as established by the
Harlem Commissioners
By Virtue of an Act of the Legislature passed
April 17th 1857
Surveyed in accordance with the resolution
of the Common Council
approved October 26th 1857
By
H. Z. Sandford
City Surveyor
1857.

Adopted by the Board of Aldermen
September 21st 1857
Adopted by the Board of Councilmen
October 20th 1857
Approved by the Mayor
October 21st 1857
D. T. Valentine
Clerk of Common Council

City made by
Robert L. Watts
City Surveyor
9 Chambers St
Dec 7th 1857

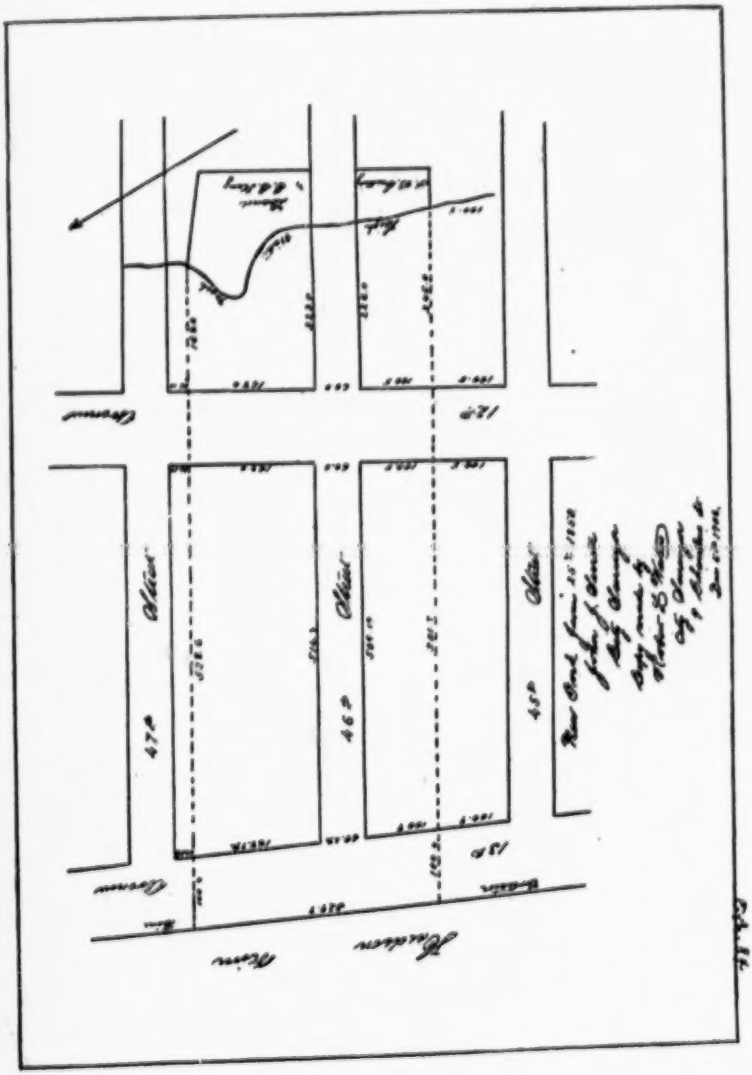
CITY'S EXHIBIT 81.

CITY'S EXHIBIT 82.



CITY'S EXHIBIT 83.

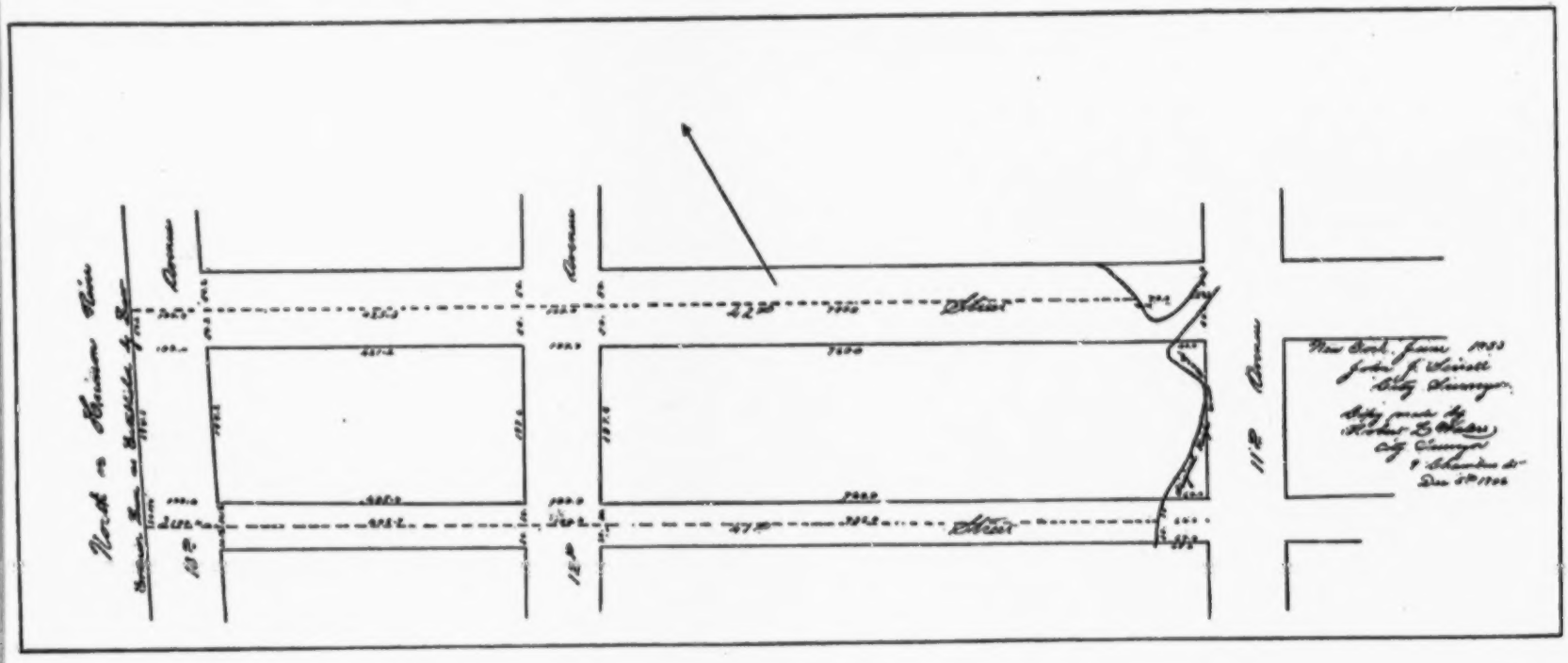
CITY'S EXHIBIT 84.



CITY'S EXHIBIT 85.

5932

8655



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8656

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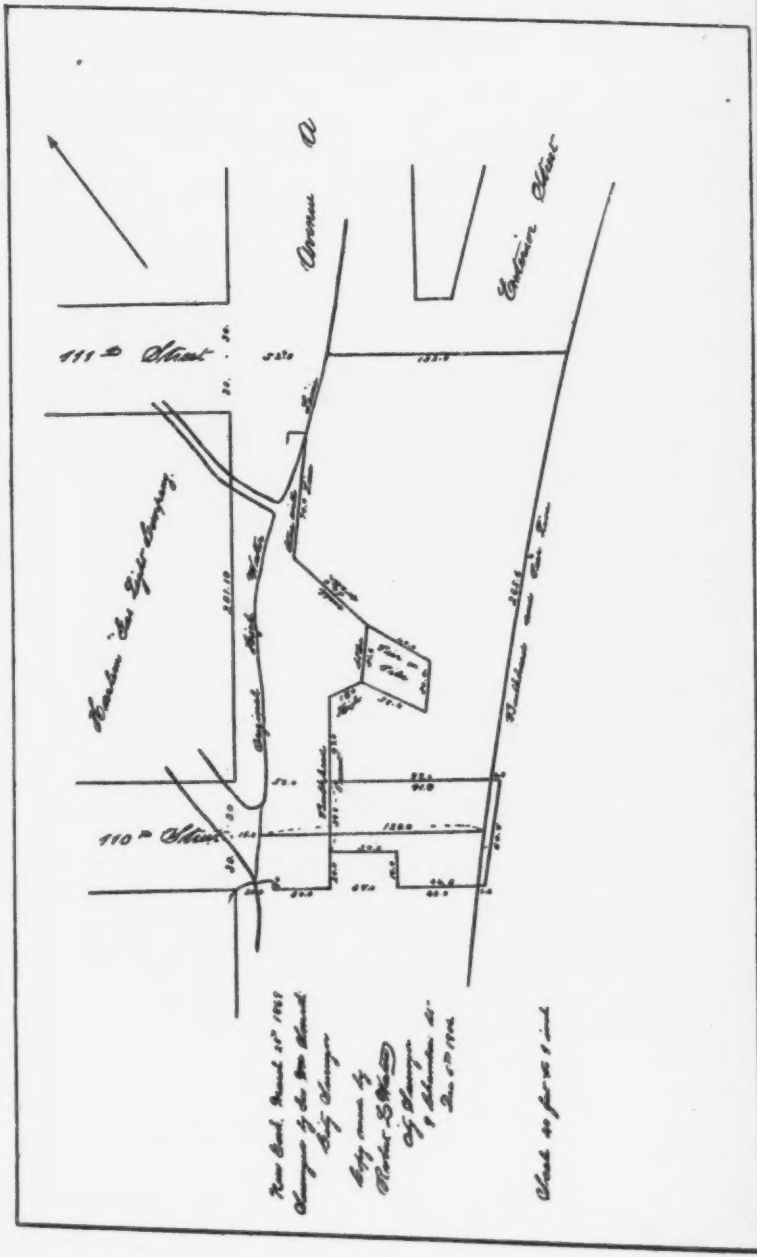


CITY'S EXHIBIT 88.

1671

STATE'S EXHIBIT TT.

STATE'S EXHIBIT UU.

5937

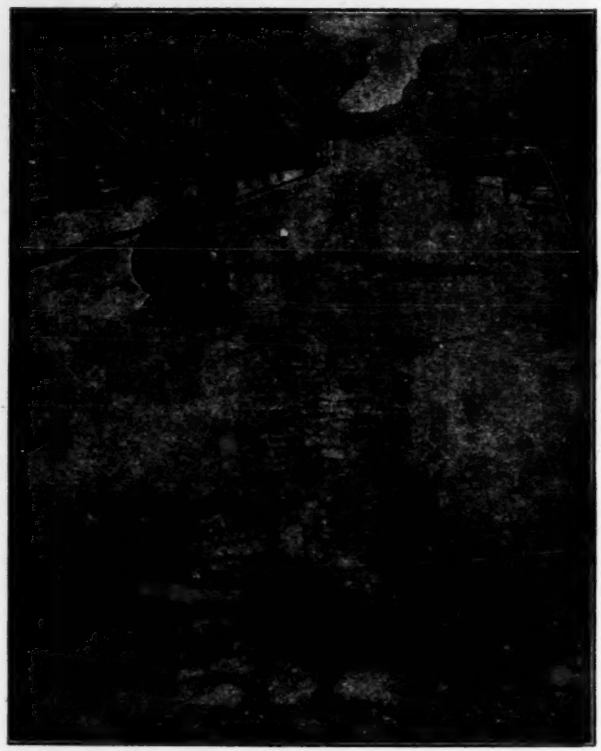
1673 **8660**

STATE'S EXHIBIT VV.

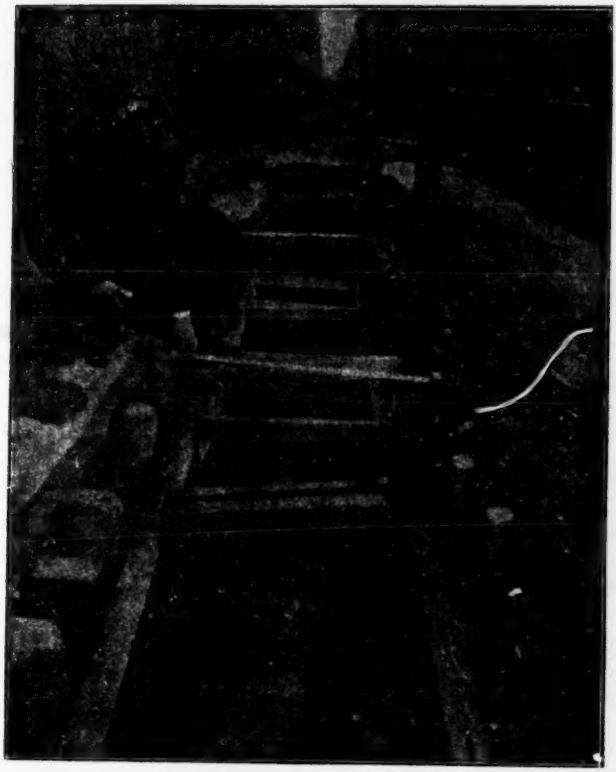
8661 5938

1674

STATE'S EXHIBIT WW.



STATE'S EXHIBIT XX.



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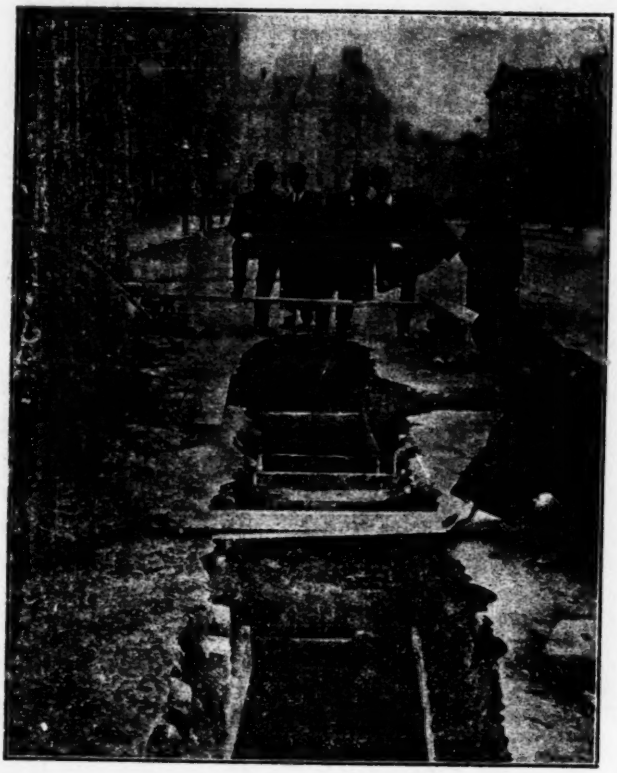
8663 1676

STATE'S EXHIBIT YY.



EXHIBITS NOT SUITABLE FOR MICRO-FILMING

CITY'S EXHIBIT 127.

NINETY-NINTH STREET.

INVENTORIES OF THE BUILDINGS AND APPARATUS OF THE 99TH STREET GAS WORKS COMPANY OF NEW YORK CITY, 1906.

Daily Capacity, 5,500,000.

	BUILDINGS & APPARATUS.	Date Inst. or Erect.	Rowland, 1884. Actual Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	Ground Area.	Cubic Contents Superstructure Only
	BUILDINGS ONLY.						
1.	Engine House, Boiler House, Pump House, Machine Shop, Retort and Accumulator House	1881	$82,250	$96,162	$91,354	15,575.18	436,1[illegible]
2.	Generator House	1881	25,500	30,732	29,807	4,735.32	116,01[illegible]
3.	Foundations for Air Condenser	1881	..	900	900	..	..
4.	Foundations for Salt Water Condenser	1881	..	368	368	..	..
5.	Office Building	1881	11,000	8,922	8,922	1,288.14	39,2[illegible]
6.	Meter House	1881	9,200	10,039	10,039	2,028.	54,756
7.	Purifier House	1881	28,600	43,589	41,409	7,626.	228,7[illegible]
8.	Lime House	1881	5,300	3,787	1,984	1,181.25	21,2[illegible]
9.	Valve House and Drip Pump House	1881	..	108	108	120.	1,2[illegible]
10.	Valve House No. 1	1881	..	513	480	53.	424
11.	Valve House No. 2	1881	..	513	480	53.	424
12.	Valve House No. 3	1881	..	513	480	53.	424
13.	Valve House No. 4	1881	..	513	480	53.	424
14.	Condenser and Scrubber House	1881	8,000	10,185	10,185	2,028.	54,756
15.	Exhauster House	1881	..	8,400	8,400	1,152.09	28,80[illegible]
16.	Tar Separator System 4 ft. deep	1881	..	1,775	1,775	1,044.	4,176.
17.	Pump Pit	1881	..	624	624	314.41	3,144.
18.	Tar Storage Foundation	1881	..	128	128	..	..
19.	Coal Shed	1881	18,500	21,600	19,872	5,863.	103,92[illegible]
20.	Filter Press House	1881	..	408	388	260.	1,82[illegible]
21.	Walls Around Works, 800 ft.	1895	11,810	15,710	15,710	..	7,293.
22.	Fences, 1,750 ft	1895	2,534	3,380	3,380	..	..
23.	Cover Over Doors of Oil Tank in Ground, Frame Shed	1895	..	534	534	937.5	5,62[illegible]
24.	Foundations Under Hot Scrubbers in Yard						
		1895	..	237,142	247,807	..	1,097,172
		1895	..	15,710 Walls		..	11,46[illegible]
		1895	..	6,551 Value not computed in cubic ft.		..	1,108,64[illegible]
				259,403			
99.	Tank House and Contents	1895	7,745				
100.	Hyd. Acc. House	1895	3,000				
102.	Carburetter House and Three Carburetters	1895	19,200				
103.	Stable and Horses	1895	3,075				
			235,714				

CITY'S EXHIBIT 127.

E BUILDINGS AND APPARATUS OF THE 99TH STREET GAS WORKS OF THE CONSOLIDATED GAS COMPANY OF NEW YORK CITY, 1906.

Daily Capacity, 5,500,000.

	Date Inst. or Erect.	Rowland, 1884. Actual Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	Ground Area.	MEYER. Cubical Contents Superstructure Only.	MEYER. Cost Per Square Ft.	MEYER. Cost Per Cubic Ft.	MARKS. Cubical Contents Including Basement.	MARKS. Cost Per Cubic Ft.	MARKS. Total Cost.	Values Not Computed.
chine												
	...1881	$82,250	$96,162	$91,354	15,575.18	436,105.04	6.174	.221	436,105.04	.10	$43,610.50	
	...1881	25,500	30,732	29,807	4,735.32	116,015.34	6.489	.265	116,015.34	.12	13,921.84	
	...1881	..	900	900	..	..	..	..	..	..	..	$1,000
	...1881	..	368	368	..	..	..	..	..	..	..	..
	...1881	11,000	8,922	8,922	1,288.14	39,288.27	6.926	.227	39,288.27	.15	5,893.24	..
	...1881	9,200	10,039	10,039	2,028.	54,756.	4.950	.183	54,756.	.15	8,213.40	..
	...1881	28,600	43,589	41,409	7,626.	228,780.	5.716	.191	228,780.	.12	27,453.60	..
	...1881	5,300	3,787	1,984	1,181.25	21,262.50	3.206	.178	21,262.50	.12	2,551.50	..
	...1881	..	108	108	120.	1,200.	.90	.09	1,200.	.05	60.	..
	...1881	..	513	480	53.	424.	9.679	1.210	424.	.05	21.20	..
	...1881	..	513	480	53.	424.	9.679	1.210	424.	.05	21.20	..
	...1881	..	513	480	53.	424.	9.679	1.210	424.	.05	21.20	..
	...1881	..	513	480	53.	424.	9.679	1.210	424.	.05	21.20	..
	...1881	8,000	10,185	10,185	2,028.	54,756.	5.022	.186	54,756.	.15	8,213.40	..
	...1881	..	8,400	8,400	1,152.09	28,802.25	7.291	.292	28,802.25	.15	4,320.34	..
	...1881	..	1,775	1,775	1,044.	4,176.	1.700	1.133	3,706.	..	1,000.	.. $7 per cu. yd.
	...1881	..	624	624	314.41	3,144.10	1.985	.198	3,144.10	.03	94.32	..
	...1881	..	128	128	..	..	..	..	..	..	..	100
	...1881	18,500	21,600	19,872	5,863.	103,922.	3.684	.208	103,922.	.15	15,588.30	..
	...1881	..	408	388	260.	1,820.	1.569	.224	1,820.	.05	91.	..
	...1895	11,810	15,710	15,710	..	7,293.	..	2.154	20,000.	.40	8,000.	Foundation stone 3 x 5 ft.
	...1895	2,534	3,380	3,380	..	..	..	..				
ed	..1895	..	534	534	937.5	5,625.	.569	.095	5,625.	.05	281.25	2,500·$1.50 lin. ft.
	...											
	1895	..	237,142	247,807	..	1,097,172.50	..	Av. .216	1,097,172.30	Av. .119	130,377.49	3,600
	1895	..	15,710 Walls		..	11,469.00 Walls			23,706.00 Walls		9,000.00 Walls	
	1895	..	6,551 Value not computed in cubic ft.		..	1,108,641.50			1,120,878.50		3,600.00	Value not computated in cu. ft.
			259,403								142,977.49	
	...1895	7,745										
	...1895	3,000										
	...1895	19,200										
	...1895	3,075										
		235,714										

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

FORTY-FOURTH STREET. CITY'S EXHIBIT 128.—(Continued.)

INVENTORIES OF THE BUILDINGS AND APPARATUS OF THE 44TH STREET STATION OF THE CONSOLIDATED GAS COMPANY OF NEW YORK CITY, 1906.

Daily Capacity, 8,500,000.

	BUILDINGS & APPARATUS.	Date Inst. or Erect.	Rowland, 1884. Actual Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	Marks, 1906. Actual Cost.	Marks, 1906. Dept. Cost.
	APPARATUS CONTINUED.						
	Forward	....	$177,046	$419,896	$401,629	$276,200	$132,000
117.	Tar Separator System	....	..	2,250	2,250	2,000	..
118.	Scale House	....	..	300	300	300	..
119.	Forced Draught Fan	....	..	1,000	950	1,000	..
120.	Totals					$279,500	$132,000
121.	4 Holders 375 cu. ft. capacity (125)	....	320,000	111,946	111,946(See 125)	300,000	279,500
122.	1 " 2,000,000 cu. ft. " (126)	....	435,500	104,982	104,982(" 126)	225,000	$411,500
123.	1 " 125,000 " " (127)	....	61,000	15,280	15,280	75,000	..
124.	1 " 125,000 " " "	....	61,000	16,690	16,690	..	..
125.	4 Brick Tanks 93 x 32	....	..	214,747	214,747(121)	..	..
126.	1 Brick Tank 185 ft. 3 in x 41 ft. 5 in	....	..	276,269	276,269(122)	..	..
127.	2 Brick Tanks 75 x 32	....	..	74,850	74,850(122)	..	..
128.	Total Value of Buildings (Meyer)				$407,767	$600,000	
129.	Total Value of Apparatus (Meyer)	....	..	..	407,175		
130.	Total Value of Yd. connections (Meyer)	....	..	..	99,910		
131.	Total Value of Holders (Meyer)	....	..	..	814,929		
132.	12 Gasogenes	....	$78,973	..	..		
133.	Gasogene appurtenances	....	46,735	..	..		
134.	18 benches, 36 furn	....	79,200	..	..		
135.	Conn. valves, etc	....	7,600	..	..		
136.	4 Carburetters	....	17,855	..	..		
137.	6 Ganges	....	28	..	..		
138.	2 Upright Boilers & Appurt	....	5,210	..	..		
139.	Beam Eng. & Counter shafting	....	13,000	..	..		
140.	2 Jet Exh. 2 McK. Blowers	....	7,298	..	..		
141.	Engine Room appurt	....	11,189	..	..		
142.	Cond. Room appurt	....	101	..	..		
143.	Stock in Eng. H. loft	....	8,617	..	..		
144.	Pump House pipe, etc	....	2,398	..	..		
145.	Oil tanks	....	43,709	..	..		
147.	Tank underground	....	2,950	..	..		
151.	Exp. gas holder	....	3,000	..	..		
153.	Naphtha tanks & Worth pumps	....	800	..	..		
154.	Meter provers Engs. etc	....	10,223	..	..		
155.	Copeland & Baron Eng	....	550	..	..		
156.	Insp. Meter & Pump	....	325	..	..		
157.	Valve & Holder conn	....	3,650	..	..		
158.	Stable con. horses etc	....	5,530	..	..		
159.	Naphtha tanks	....	6,900	..	..		
160.	Conn. & piping	....	60,000	..	..		
161.	Sewers, cisterns, sidewalk grading	....	19,608	..	..		
162.	Scows	....	5,800	..	..		
163.	Pipe & specials	....	6,300	..	..		
164.	Misc.	....	1,425	..	..		
	Total Rowlands	....	$1,503,520	$423,446	$405,129		

CITY'S EXHIBIT 129.

INWOOD.

INVENTORY OF THE BUILDINGS AND APPARATUS OF THE INWOOD GAS WORKS OF THE CONSOLIDATED (

Distributing Station.

	BUILDING & APPARATUS	Date Inst. or Erect.	Rowland, 1884. Act. Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	MEYER. Ground Area.	MEYER. Cubical Contents Superstructure.	MEYER. Cost Per Square Ft.	Co Pe Cubic
					Buildings Only.				
1.	Exhauster and Valve House	1886		3,330	3,230	572	13,728	$5.822	$
					Apparatus Only.				
							Marks, Actual Cost.		
2.	Exhauster and Eng. and Bldr	1898			1,640				
3.	Connections	1898		650	650		2,000		
4.	80-1 to 12 W. I. connections	1898		18	18				
5.	Valves	1898		255	255		300		
6.	1 Holder 60,000 cu. ft	1889		11,882	11,288		12,000	No value.	
7.	Brick Tank	1889		6,660	6,660		6,000		
8.	Total value of Buildings (Meyer)	1889			3,230				
9.	Total value of Apparatus (Meyer)	1889			1,640				
10.	Total value of Connections (Meyer)	1889			923				
11.	Total value of Holders (Meyer)	1889			17,948				
				19,465	44,252		20,300		

5948

8671

CITY'S EXHIBIT 129.

D APPARATUS OF THE INWOOD GAS WORKS OF THE CONSOLIDATED GAS COMPANY OF NEW YORK CITY, 1906.

Distributing Station.

Date Inst. or Erect.	Rowland, 1884. Act. Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	MEYER. Ground Area.	MEYER. Cubical Contents Superstructure.	MEYER. Cost Per Square Ft.	MARKS. Cost Per Cubic Ft.	MARKS. Cubical Contents in Basement	MARKS. Cost Per Cubic Ft.	MARKS. Total Cost.	Value Not Computed
				Buildings Only.							
1886		3,330	3,230	572	13,728	$5.822	$ .243	13,728	$ .10	$1,372.80	

Apparatus Only.

				Marks. Actual Cost.	
1898			1,640		
1898		650	650	2,000	
1898		18	18		
1898		255	255	300	
1889		11,882	11,288	12,000	No value.
1889		6,660	6,660	6,000	
1889			3,230		
1889			1,640		
1889			923		
			17,948		
		19,465	44,252	20,300	

132D STREET. CITY'S EXHIBIT 131.

INVENTORIES OF THE BUILDINGS AND APPARATUS OF THE 132D STREET GAS WORKS OF THE CONSOLI
OF NEW YORK CITY, 1906—DISTRIBUTING STATION

	BUILDING & APPARATUS.	Date Inst. or Erect.	Rowland, 1884. Act. Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	Ground Area.	Cubical Contents, Superstructure.	MEYER. Cost Per Square Ft.	MEYER. Cost Per Cubic Ft.	Cubic Contents Includ Basement
	BUILDINGS ONLY.									
1.	Governor and Boiler House	.	..	$26,736	$26,736	4,900	202,125	$5.456	$ .132	202,1
2.	Boiler Chimney	..	..	3,040	3,040	81.54	3,805		.800	3,8
				$26,736	$29,776		202,125		Av. $ .132	202,1
				3,040	Value not computed cu. ft.		3,805			3,8
				$29,776			205,930			205,9
	APPARATUS ONLY.									
						Marks, Act. Cost.				
3.	Governor and Boiler House	..	..							
	One No. 11 ½ Vert. Exhauster	..	..	$2,910	$2,910	$3,000				
4.	One 16½x24 Hor. Buckeye Engine.	..	..	3,010	3,010	3,000				
5.	One 24-inch Connelly Gas Gov	.	..	1,375	1,375	1,200				
6.	Three B. & W. Boilers and 2 Bat	..	..	8,000	8,000	8,000				
7.	One 6x4 Knowles Dupl. Plunger Pump	..	..	143	143	150				
8.	One No. 6 Cochrane Feed Water Heater	..	..	505	505	500				
9.	One No. 10 Steel Plate Breeching	..	..	750	750	750				
10.	One 3-inch Crown Water Heater	..	..	165	165	150				
11.	One No. 12½ Metropolit'n Injector	..	.	78	78	..				
12.	One Blow-Off Tank, 3-inch x 10	..	..	73	73	100				
13.	One 8-in. Hudson Exhauster Head	..	..	1,885	1,885	1,500				
14.	Toilet, etc	..	..	85	85	100				
				$18,979	$18,979					
15.	Connections	..	..	43,291	43,291	$18,450				
16.	Valves	..	..	4,423	4,423					
17.	One Holder, 5,000,000 Capacity	..	..	346,915	$346,915	347,000				
18.	Foundation for Holder	..	..	47,050	47,050	47,000				
19.	Total Value of Buildings	..	..		$29,776	$394,000				
20.	Total Value of Apparatus	..	..		18,979					
21.	Total Value of Connections	..	..		47,714	47,714				
22.	Total Value of Holders	..	..		393,965					
					$490,534					

CITY'S EXHIBIT 131.

THE BUILDINGS AND APPARATUS OF THE 132D STREET GAS WORKS OF THE CONSOLIDATED GAS COMPANY OF NEW YORK CITY, 1906—DISTRIBUTING STATION

	Rowland, 1884. Act. Cost.	Meyer, 1906. Actual Cost.	Meyer, 1906. Dept. Cost.	Ground Area.	Cubical Contents, Superstructure.	MEYER. Cost Per Square Ft.	MEYER. Cost Per Cubic Ft.	MARKS. Cubical Contents, Including Basement.	MARKS. Cost Per Square Ft.	MARKS. Total Cost.	MARKS. Value Not Computed.
BUILDINGS ONLY.											
	..	$26,736	$26,736	4,900	202,125	$5.456	$ .132	202,125	$ .148	$30,000	..
	..	3,040	3,040	81.54	3,805		.800	3,805		..	$3,000
		$26,736	$29,776		202,125		Av. $ .132	202,125	Av. $ .148	$30,000	$3,000
		3,040	Value not computed cu. ft.		3,805			3,805		3,000	Value not computed cu. ft.
		$29,776			205,930			205,930		$33,000	
RATUS ONLY.											
								Marks, Act. Cost.			
	..										
	..	$2,910	$2,910					$3,000			
	..	3,010	3,010					3,000			
	..	1,375	1,375					1,200			
	..	8,000	8,000					8,000			
	..	143	143					150			
	..	505	505					500			
	..	750	750					750			
	..	165	165					150			
	.	78	78					..			
	..	73	73					100			
	..	1,885	1,885					1,500			
	..	85	85					100			
		$18,979	$18,979								
	..	43,291	43,291					$18,450			
	..	4,423	4,423								
	..	346,915	$346,915					347,000			
	..	47,050	47,050					47,000			
	..		$29,776					$394,000			
	..		18,979								
	..		47,714					47,714			
	..		393,965								
			$490,534								

SIXTY-THIRD STREET. CITY'S EXHIBIT, 133.

INVENTORIES OF THE BUILDINGS AND APPARATUS OF THE 63RD STREET GAS WORKS OF THE CONSOLIDATED G

Distributing Station.

	BUILDINGS & APPARATUS.	Date Inst. or Erect.	Rowland, 1894. Act. Cost.	Meyer, 1906. Act. Cost.	Meyer, 1936. Dep. Cost.	Ground Area.	MEYER. Cub. Contents Superstucture Only.	Cost Per Square Ft.	Cost Per Cubic Ft.	Cub. Contents Including Basement.
	BUILDINGS ONLY									
1.	Engine Room	....	..	$1,023	$1,023	672	6,720	$1,522	$.152	6,720
2.	Valve House	....	..	870	870	480	5,040	1,831	.173	5,040
3.	Boiler House	....	..	960	960	510	7,905	1,882	.122	7,905
4.	Brick Walls Around Property	....	..	8,576	8,576	..	8,800	..	.975	8,800
		....	..	$2,853	$11,429	..	19,665	..	Av..$.145	19,665
		....	..	8,576	Walls ..	..	8,800	Walls		8,800
				$11,429			28,465			28,465
	APPARATUS ONLY.									
						Marks. Act. Cost.				
5.	Engine Room One 30 h.p. Morris Engine Rev. 10x8	....	$1,400	$1,430	$1,287	$1,300				
6.	One Sturtevant Exhauster Connections, etc	....	..	750	735	800				
7.	Valve House, One Photometer	....	..	650	650	650				
8.	Boiler House, One 66-in. x 16-in. Cont. Iron Works Boiler	....	..	1,250	1,225	1,200				
9.	One Simplex Blake Pump, 10x6	....	..	360	340	400				
10.	One Metropolitan Injector	....	..	45	45	50				
11.	In the Yard, One Duplex Pump, 12x6	....	..	330	314	300				
12.	One Drip Water Tank	....	..	350	332	350				
		....	1,400	5,165	4,928	5,050				
13.	Pipe and Connections, 225 24-inch to 30-inch	....	..	6,960	6,960	..				
14.	Eighty 1½ and 2	....	..	18	18	..				
15.	Valves	....	..	909	909	7,887				
16.	One No. 3 Holder, 3,000,000 c. f. Capacity	....	..	152,355	152,355	..	152,000			
17.	Retaining Wall (200 ft.)	....	..	11,090	11,090					
18.	Brick Tank	....	..	256,922	256,922	..	267,000			
							419,000			
19.	Total for Buildings (Meyer)	....	..	..	11,429					
20.	Total for Connections (Meyer)	....	..	..	4,828					
21	Total for Connections (Meyer)	....	..	..	7,887					
22.	Total for Holders (Meyer)	....	..	..	420,367					
		....	..	..	444,511					

CITY'S EXHIBIT, 133.

GS AND APPARATUS OF THE 63RD STREET GAS WORKS OF THE CONSOLIDATED GAS CO. OF NEW YORK CITY, 1906.

Distributing Station.

	Date Inst. or Erect.	Rowland, 1884. Act. Cost.	Meyer, 1906. Act. Cost.	Meyer, 1906. Dep. Cost.	Ground Area.	MEYER. Cub. Contents Superstucture Only.	Cost Per Square Ft.	Cost Per Cubic Ft.	MARKS. Cub. Contents Including Basement.	Cost Per Cubic Ft.	Total Cost.	Values Not Computed.	1906. Dept. Cost.
BUILDINGS ONLY													
.....	....	..	$1,023	$1,023	672	6,720	$1,522	$.152	6,720	$ .05	$336		
.....	....	..	870	870	480	5,040	1,831	.173	5,040	.05	252		
.....	....	..	960	960	510	7,905	1,882	.122	7,905	.05	395.25		
.....	....	..	8,576	8,576	..	8,800	..	.975	8,800	.40	3,520		
	....	..	$2,853	$11,429	..	19,665	..	Av..$.145	19,665	Av. $.05	$983.25		
	....	..	8,576	Walls ..	..	8,800	Walls		8,800	Walls	3,520	Walls	
			$11,429			28,465			28,465		$4,503.25		
RATUS ONLY.													
)x8....	....	$1,400	$1,430	$1,287	$1,300								
.....	....	..	750	735	800								
.....	....	..	650	650	650								
Boiler	....	..	1,250	1,225	1,200								
.....	....	..	360	340	400								
.....	....	..	45	45	50								
.....	....	..	330	314	300								
.....	....	..	350	332	350								
	....	1,400	5,165	4,928	5,050								
.....	....	..	6,960	6,960	..								
.....	....	..	18	18	..								
... ..	....	..	909	909	7,887								
.....	....	..	152,355	152,355	..	152,000							
.....	....	..	11,090	11,090									
.....	....	..	256,922	256,922	..	267,000							
						419,000							
.....	....	..	..	11,429									
.....	....	..	..	4,828									
.....	....	..	..	7,887									
.....	....	..	..	420,367									
	....	..	..	444,511									

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

8682 CITY'S EXHIBIT 16A.

CONTRACT FOR BITUMINOUS COAL.

APRIL 29, 1903.

Mr. L. B. Gawtry, Vice-President, Consolidated Gas Company, 4 Irving Place, City.

DEAR SIR:

This will confirm our conversation of this date, whereby the Coal Co. agrees to sell to the Consolidated Gas Company of New York 50,000 tons of 3/4" screened coal, to be shipped between date and April 1st, 1904, subject to strikes, car supply and all other causes beyond our control, and to be delivered to you in boats alongside your docks at your several plants.

The price to be $3.45 per ton of 2240 lbs. alongside your docks.

It is further understood that on this contract we will ship you coal from our and mines, or in the event of our inability to ship coal from these two mines, that we will ship you coal equal thereto, if not better, for gas making purposes.

Please acknowledge receipt of this letter confirming our agreement, and oblige,

Yours very truly,

——— ———.

8683 Copy.

NEW YORK, *May 1st*, 1903.

CONSOLIDATED GAS COMPANY OF NEW YORK.

DEAR SIR:

We beg to acknowledge the receipt of your letter of April 29th, and we hereby agree to purchase from you fifty thousand (50,000) tons of screened coal, to be equal in quality to the coal that we have had from you in the past, and to be delivered alongside of our docks at $3.45 per gross ton. This coal is purchased under the same conditions, *i. e.*, as to weights, etc., as heretofore; and is to be taken from your and mines as far as possible, but in the event of your inability to ship the total quantity from these two mines, the balance to be equal thereto, if not better, for gas-making purposes.

Kindly communicate with Mr. A. M. Smith, at this address, regarding details of shipments, etc.

Yours truly,
(Signed) L. B. G.,
Vice-President.

CITY'S EXHIBIT 34.

(For Identification.)

Being book called "Vouchers Audited, Contracts" (Record, page 1014).

8684 CITY'S EXHIBIT 123.

Directors:
W. J. Springborn.
Harris R. Cooley.
D. E. Leslie.

Telephones:
Bell Main 56
Cuy. Central 1

City of Cleveland,
Department of Public Service,
Division of Water.

Edward W. Bemis, Superintendent of Water Works.

Nov. 12*th*, 1906.

Gen'l Morris R. Schaff, C/o Massachusetts Gas Commission, Boston, Mass.

DEAR GEN'L SCHAFF:

Will you kindly write me on receipt of this whether it was Lynn or Fall River that you said had just reduced the price of gas to 85 cents? Please direct your reply to me at No. 720 Park Row Building, New York City, where I expect to be from Thursday morning until Saturday noon.

Thanking you in advance, I remain,

Very sincerely yours,

EDWARD W. BEMIS,
M. S.

B-H

Lynn, 85 cents from Oct. 1st.
M. S.

8685 CITY'S EXHIBIT 124.

ELY

Office of
The Director
C. S. S.

Department of Commerce and Labor.
Bureau of the Census.
Washington,

DECEMBER 5, 1906.

Mr. Edward W. Bemis, Supt., Water Works, Dept. of Public Service, Cleveland, Ohio.

DEAR SIR:

I have to acknowledge the receipt of your letter of November 30th, which was received in this Office December 4th. In response to your inquiry, I will say that my estimates of the population of the

several boroughs of New York city were based upon their increase as shown by the State Census of 1905 over the Federal Census of 1900, assuming that the yearly increase was one-fifth of the quinquennial increase. The assumption that the island of Manhattan is not increasing in population is incorrect, as the State Census of 1905 showed an actual increase in the five years of 252,835.

Very respectfully, M. PORTER,
Acting Director.

8686 CITY'S EXHIBIT 136.

"AN ACT to amend Chapter three hundred and thirty-eight of the laws of eighteen hundred and ninety-two, entitled 'An Act to authorize the East River Gas Company of Long Island City to supply gas and electricity in the City of New York,' so as to authorize the said company to lay and maintain mains and pipes in that portion of the Borough of Queens included in the former City of Long Island City."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter three hundred and thirty-eight of the laws of eighteen hundred and ninety-two, entitled "An Act to authorize the East River Gas Company of Long Island City to supply gas and electricity in the City of New York," is hereby amended by incorporating therein an additional section between sections six and seven, to be known as section six-a and to read as follows:

6a. The East River Gas Company of Long Island City, its successors and assigns, shall also have the right to exercise in the portion of the Borough of Queens, included in the former City of Long Island City, as well as in the territory hereinbefore expressly included all the rights, powers and privileges hereinbefore conferred upon the said company, but subject to all payments, obligations, and restrictions hereinbefore imposed, provided, however, that no electrical franchises are by this section conferred upon the said company.

SECTION 2. This act shall take effect immediately.

8687 COMPLAINANT'S EXHIBIT 335.

This contract made and entered into this fifth day of December, 1904, between Gulf Refining Company, of Port Arthur, Texas, first party, and Queens Borough Gas & Electric Co., Rockaway Beach, L. I., second party.

Witnesseth—That first party sells and agrees to deliver to second party, and the second party agrees to purchase and receive from first party.

Article—Solar (Gas) Oil for use in their plant at Rockaway Park, L. I., N. Y.

Quantity—Bbls. Maximum 400,000 gals. Minimum 350,000 gals.

Price—Three and one-quarter cents per gallon. F. O. B. Rockaway Park, L. I.

Delivery—By Barge, at tank located at Rockaway Park, in lots of not less than 60,000 gals, nor more than—bbls., unless otherwise agreed upon.

Time—Between April 1st, 1905, and April 1st, 1906. Five days written notice to be given representative of first party at No. 507 Battery Park Bldg. before each delivery is required.

Payment—Payments shall be made on the 10th day of each month at first party's Pittsburg office for all oil delivered during the preceding month, and in case second party shall fail to pay any draft drawn by first party for bills due, first party may, if so elect, cancel and terminate this contract.

Demurrage—If delivery is by rail, second party agrees to unload cars without delay, and any demurrage accruing to be paid by second party.

Conditions—Delivery under these terms can be enforced only wherein the discharge pipe—if any be required—shall be provided by the second party of a size not less than three inches, if distance be less than 1000 feet, or four inches if more, but in no case 8688 for more than one mile without special agreement. If by water, the second party shall place substantial posts for tying barge and arrange suitable piling for properly fending same, with necessary platform for support of discharge pipe, tying up, etc. The first party agrees to pump oil from the tanks or barge to reservoir of the second party. Delivery may be made by rail or water, as first party may elect.

This agreement cannot be used to enforce delivery by water to second party if water at place of delivery be less than eight feet. Liability of first party ceases when shipment is delivered to Railroad Company.

In case of strike, fire, failure of railway or vessel service as public or private carriers, or any unavoidable act of God or providential cause happening to either party to this contract, the suffering party may, at its or their option, suspend terms and conditions of this contract, for a reasonable period, and no liability for damages shall attach against either party on account thereof.

This contract to be signed in duplicate by both parties hereto, and become effective only when approved by General Sales Manager of the first party; and when so approved, duplicate will be forwarded promptly to second party.

Witness the signature o. first and second parties this fifth day of December, 1905.

GULF REFINING COMPANY,

Attest: By EDW. A. LYON, *Agent.*

QUEENS BOROUGH GAS & ELECTRIC CO.,

Approved: CARELTON MACY, *President.*

G. R. NUTTY,
General Sales Manager.

1703

STATE'S EXHIBIT ZZ.

CONSOLIDATED GAS COMPANY OF NEW YORK.

SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR 1905.

Gas Made—				
14th St. Station	1,490,009,000 c. f.			
42nd St. Station	1,239,245,000 c. f.			
21st St. Station	4,350,120,000 c. f.			
44th St. Station	2,265,475,000 c. f.			
99th St. Station	1,306,061,000 c. f.			
		10,657,810,000 c. f.		
Gas Made by Other Companies—Including Leakage—				
New Amsterdam Gas Co.	2,173,196,400 c. f.			
Standard Gas Light Co.	403,309,322 c. f.			
Mutual Gas Light Co.	267,696,800 c. f.			
Central Union Gas Co.	85,007,800 c. f.	2,929,210,322 c. f.		
		13,587,020,322 c. f.		
Gas Sales—By Branches—				
Branch No. 1	2,760,004,900 c. f.		$2,758,853.62	
Branch No. 2	3,364,012,300 c. f.		3,361,483.87	
Branch No. 4	2,959,411,600 c. f.		2,957,782.23	
Branch No. 6	3,548,021,490 c. f.		3,542,279.46	
G. O.	651,713,477 c. f.		933,403.79	
	13,283,163,767 c. f.		$13,553,802.97	$13,553,802.97
Operating Expenses (Coal)—				
14th St. Station.	Tons.			
Used in Retorts	123,773.37 at $3.19	394,907.04		
Used in Generators (21st)	62.02 at 4.36	270.66		
		395,177.70		
Labor employed on above coal		17,179.74		
Cartage employed on above coal		14,090.84	426,448.28	
42nd St. Station.	Tons.			
Used in Retorts	105,509.44 at $3.17	334,699.17		
Labor employed on coal		18,326.06		
Cartage employed on coal		539.24	353,564.47	
21st St. Station.	Tons.			
Used in Generators	56,477.29 at $4.36	246,302.78		
Used under Boilers	6,916.25 at 3.65	25,254.62		
		271,757.40		
Labor employed on coal		5,544.25		
Cartage employed on coal		861.34	278,162.99	
44th St. Station.	Tons.			
Used in Generators	29,888.37 at $4.34	129,837.90		
Used under Boilers	2,178.32 at 3.72	8,101.45		
		137,939.35		
Labor employed on coal		3,815.19		
Cartage employed on coal		243.59	141,998.13	
99th St. Station.	Tons.			
Used in Generators	19,597.00 at $4.39	86,068.91		
Used under Boilers	1,305.10 at 3.68	4,800.36		
		90,869.27		
Labor employed on coal		4,284.83		
Cartage employed on coal		2,487.88	97,641.98	$1,297,815.85
Forward				$1,297,815.85

8690 5964

Forward.....			$1,297,815.83
Less Residuals:			
Coke—			
(a) 14th St. Station..... 83,434.45 Lds. at $2.09	174,219.31		
Less Cost to Handle—			
Labor 25,843.76			
Cartage 6,599.67	32,443.43	141,775.88	
(a) 42nd St. Station..... 83,637.25 Lds. at $1.96	164,081.60		
Less Cost to Handle—			
Labor 9,834.63			
Cartage 4,565.30	14,399.93	149,681.67	291,457.55
Tar (Coal).			
14th St. Station..... 123,773.37 Tons Carbonized at 28.59c		35,392.33	
42nd St. Station.... 105,509.44 Tons Carbonized at 28.58c		30,154.37	65,546.70
Ammoniacal Liquor—			
14th St. Station..... 2,623,811 lbs. at 01.34		35,244.20	
42nd St. Station ..... 2,273,075 lbs. at 01.35		30,605.45	65,849.65
Carbon—			
14th St. Station..... 216,955 lbs. at 01.00c		2,169.55	
42nd St. Station..... 268,765 lbs. at 01.00c		2,687.65	4,857.20
Spent Oxide—			
14th St. Station..... 4,208,381 lbs. at 0.12c		4,827.82	
42d St. Station..... 1,368,654 lbs. at 0.10c		1,368.65	6,196.47
Oil Tar—			
21st St. Station..... 1,584,460 gals. at 1.57c		27,294.43	
44th St. Station..... 852,437 gals. at 1.86c		15,881.95	
99th St. Station..... 475,929 gals. at 1.90c		9,030.88	52,207.26
Total Residuals.....			$486,114.83
			$811,701.02
Coke—			
(b) 21st St. Station..... 14,014.18 tons at $3.2223	45,159.20		
Labor in Handling—	1,159.00	46,309.20	
21st St. Station for account of 14th St:			
Oil Gas..... 4.30 tons at $3.2223		14.40	
(b) 44th St. Station..... 5,400.22 tons at $3.3528	18,106.23		
Labor in Handling—	50.38	18,156.61	
(b) 99th St. Station..... 473.85 tons at $1.4609	692.26		
Labor in Handling—	92.93		
Cartage.	43.87	829.06	65,309.27
Fuel. Oil, Labor (inc. Drip Oil if used in Mfg.):			
21st St. Station..		1,629.19	
44th St. Station.....		1,153.76	
99th St. Station.....		1,641.75	4,424.70
Forward			$881,434.99

(a) For tons and avg price for ton see pp. 13 & 14.
(b) For loads and avg price for loads see pp. 15-16-17.

COPY BOUN

5965

8691

	Forward			$681,434.99
...tho—				
...21st St. Station	5,587 Gals. at .04-3/8c			244.43
...Oil—				
14th St. Station	3,381,667 Gals. at .04.22c		$142,699.09	
(a) 21st St. Station	20,058,206 Gals. at 04.26c		855,081.15	
42nd St. Station	2,083,413 Gals. at 04.16c		86,602.69	
44th St. Station	10,573,057 Gals. at 04.23c		446,873.18	
99th St. Station	5,779,427 Gals. at 04.13c		238,782.31	
	41,876,670 Gals. at 04.23c			1,769,968.42
...l Oil—				
42nd St. Station	2,502 Gals. at .02c			50.04
...e—				
42nd St. Station	62,125 Bus. at 04.99c		3,101.48	
21st St. Station	249 Bus. at 05.04c		12.54	3,114.02
...de—				
14th St. Station	25,790 Bus at 17.42c		4,492.75	
21st St. Station	41,810 Bus. at 15.54c		6,497.10	
42nd St. Station	20,000 Bus. at 14.63c		2,926.24	
44th St. Station	24,385 Bus. at 15.97c		3,893.53	
99th St. Station	9,500 Bus. at 14.35c		1,363.73	19,173.35
	121,485 Bus. at 15.78c			
...ter—	Per M. c. f.			
14th St. Station	3,594,000 c. f. at $1.00		3,594.80	
21st St. Station	9,230,200 c. f. at 1.00		9,230.20	
42nd St. Station	3,059,300 c. f. at 1.00		3,059.30	
44th St. Station	4,444,400 c. f. at 1.00		4,444.40	
99th St. Station	2,355,500 c. f. at 1.00		2,355.50	* 22,684.20
	**22,683,400 c. f. at $1.00			
..., Waste and Sundries—				
14th St. Station—				
Colored Waste, 6,440 lbs.	at .05c	$322.00		
Loam, 364 loads	at 1.00	364.00		
Machine Oil		.....		
Winter Car Oil, 3,405 1/2 gals.	at .13c	442.67		
Crank Case Oil, 324 1/2 gals.	at .15c	48.70		
Renoun Oil, 25 1/2 gals	at .19c	4.74		
Amber Cylinder Oil, 265 1/2 gals.	at .27c	71.71		
Dark Cylinder Oil, 1,987 gals.	at .25c	496.78		
Cog Grease, 1,437 lbs.	at .05c	71.85		
Lubricant, 507 lbs.	at .05c	25.35		
Asbestos Packing, 25 lbs.	at .18c	4.60		
Motor Grease, 52 lbs.	at .07c	3.56		
Square Flax Packing, 65 3/8 lbs.	at .24c	15.69		
Rubber Packing, 91 1/2 lbs.	at .41c	37.25		
Usudurium Packing, 36 lbs.	at .64c	22.85		
Rainbow Packing, 70 5/8 lbs.	at .49c	34.22		
Pure Sheet Packing, 5 1/2 lbs.	at. .71 1/4c	3.92		
Electric Current		423.48		
Barrels, *148		*144.00		
		2,249.37		
...rd at 21st St. for 14 St. Oil Gas—				
White Waste, 71 lbs.	at .09c	6.43		
Colored Waste, 534 lbs.	at .05c	26.70		
Cylinder Oil, 59 gals.	at .25c	14.75		
Dynamo Eng. Oil, 200 gals.	at .18c	36.00		
Loam, 28 loads	at $1.30	36.45		
Winter Car Oil, 3 gals.	at .13c	.39	2,370.09	
	Forward		2,370.09	$2,696,669.45

**Water used as shown by Engineer's Report is the amount indexed by Station Meter taken by ourselves.

Water used as shown in this statement is the amount as billed by the City and actually paid.

a Excluding gas oil used for 14th St. Station.

* Red ink in original.

TO CLOSE IN CENTER

5966

8692

Brought forward		$2,370.09	$2,696,669.45
42nd St. Station—			
Colored Waste, 1,983 lbs. at 05.00c	$99.15		
Cylinder Oil, 586 1/2 gals. at 27.00c	158.36		
Machine Oil, 2,878 1/2 gals. at 17.70c	511.25		
Winter Car Oil, 412 gals. at 13.00c	53.57		
Albany Grease, 599 lbs. at 05.70c	34.26		
Barrels, *67	*63.70	792.89	
21st St. Station—			
White Waste, 777 lbs. at 09.00c	70.84		
Colored Waste, 1,711 lbs. at 05.00c	85.55		
Loam, 14 loads. at $1.35	18.90		
Cylinder Oil, 394 gals. at 25.00c	98.51		
Dynamo Engine Oil, 1,627 gals. at 18.00c	292.86		
Winter Car Oil, 20 gals. at 13.00c	2.60		
Candles, 847 packages. at 02.30c	19.53		
Shavings, 838 bales. at 26.80c	224.38		
Prime Lard Oil, 6 lbs. at 60.00c	3.60		
Texas Cylinder Oil, 18 gals. at 13.00c	2.34		
Texas Engine Oil, 17 1/2 gals. at 16.00c	2.80		
Barrels, *75	*73.80	748.11	
44th St. Station—			
Colored Waste, 2,413 lbs. at 05.00c	120.65		
Cylinder Oil, 360 gals. at 27.00c	97.23		
Machine Oil, 306 1/2 gals. at 18.00c	55.17		
Winter Car Oil, 449 1/2 gals. at 13.00c	58.47		
Shield's Cylinder Compounds, 3,843 gals. at 07.20c	276.71		
Carbonate Soda, 260 lbs. at 01.00c	2.60		
Kent's Compound, 242 gals.	28.32		
Heavy Engine Oil, 983 gals. at 18.00c	176.94		
Shavings, 75 1/2 bales. at 30.10c	22.72		
Tallow, 40 lbs. at 09.00c	3.60		
Miscellaneous	3.75		
Barrels, *56	*53.45	792.71	
99th St. Station—			
White Waste, 295 lbs. at 09.10c	26.92		
Colored Waste, 1,570 lbs. at 05.00c	78.50		
Boiler Liquid, 4,926 gals. at 07.40c	362.73		
Cylinder Oil, 187 gals. at 25.00c	46.76		
Heavy Engine Oil, 719 gals. at 18.00c	129.42		
Glycerine, 250 lbs. at 17.00c	42.50		
Dry Graphite, 6 lbs. at 16.00c	.96		
Lub. Candles, 2 packages. at 03.00c	.06		
Shavings, 48 bales. at 30.20c	14.50		
Miscellaneous	3.00		
Barrels, *2	*2.00	703.35	5,40
Cartage			17,12
Forward			$2,719,20

*Red ink in Original.

PAY-ROLL LABOR FOR THE CALENDAR YEAR 1905—

	Brought forward		2,719,200.10
Labor—			
Generator House—			
21st St. Station	38,165.42		
44th St. Station	18,705.17		
99th St. Station	10,388.96	67,259.55	
Retort House—			
14th St. Station	87,754.21		
42nd St. Station	130,420.64	218,174.85	
Boiler House—			
14th St. Station	6,033.72		
42nd St. Station	4,782.90		
21st St. Station	11,837.05		
44th St. Station	8,586.21		
99th St. Station	5,451.91	36,692.39	
Purifying House—			
14th St. Station	4,179.45		
42nd St. Station	4,668.31		
21st St. Station	2,590.07		
44th St. Station	881.41		
99th St. Station	1,640.16	13,959.40	
Superintendence—			
14th St. Station	6,894.06		
42nd St. Station	4,822.42		
21st St. Station	10,443.99		
44th St. Station	7,495.00		
99th St. Station	6,554.96	36,210.43	
Gas Oil—			
14th St. Station	10,335.42	10,335.42	382,632.04
	Forward		$3,101,832.24

NET AMOUNT OF MATERIAL AND LABOR.

Brought forward.....			$3,101,832.2
Repairs to Buildings—			
14th St. Station—			
Labor	3,323.74		
Material	1,168.47		
42nd St. Station—			
Labor	3,361.99		
Material	1,204.39		
21st St. Station—			
Labor	5,049.95		
Material	3,854.66		
44th St. Station—			
Labor	2,887.04		
Material	755.01		
99th St. Station—			
Labor	1,584.06	16,206.78	
Material	1,711.38	8,693.91	
To Repairs to Apparatus—			
14th St. Station—			
Labor	28,962.02		
Material	17,919.15		
42nd St. Station—			
Labor	13,278.16		
Material	10,306.38		
21st St. Station—			
Labor	26,506.22		
Material	37,739.83		
44th St. Station—			
Labor	10,838.99		
Material	11,486.08		
99th St. Station—			
Labor	6,988.13	86,573.52	
Material	5,172.43	82,623.87	
To Repairs to Tools and Implements—			
14th St. Station—			
Labor	4,423.90		
Material	1,429.59		
42nd St. Station—			
Labor	3,669.75		
Material	907.86		
21st St. Station—			
Labor	1,510.85		
Material	1,973.11		
44th St. Station—			
Labor	1,274.42		
Material	221.42		
99th St. Station—			
Labor	710.25	11,589.17	
Material	107.33	4,639.31	
Total Labor		114,369.47	
Total Material		95,957.09	210,326
Forward			$3,312,15

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Brought forward			$3,312,158.8
Expense—			
14th St. Station—			
Labor	6,444.83		
Material	3,622.91	10,067.74	
21st St. Station—			
Labor	13,998.23		
Material	6,735.76	20,733.99	
42nd St. Station—			
Labor	7,188.08		
Material	4,124.21	11,312.29	
44th St. Station—			
Labor	4,669.53		
Material	3,911.02	8,580.55	
99th St. Station—			
Labor	5,856.69		
Material	2,465.71	8,322.40	59,016.9
Distribution—			
14th St. Station—			
Labor	7,389.15		
Material	3,894.04	11,283.19	
21st St. Station—			
Labor	5,425.01		
Material	9,498.95	14,923.96	
42nd St. Station—			
Labor	1,916.51	1,916.51	
Material			
44th St. Station—			
Labor	1,825.00	1,825.00	
Material			
99th St. Station—			
Labor	1,855.13		
Material	51.55	1,906.68	31,855.34
Forward			$3,403,031.1

TO CLOSE IN CENTER

Brought Forward			$3,403,031.1
DISTRIBUTING STATION EXPENSE—			
18th Street Station—			
Coke—Material	1,226.75		
Water—Material	458.84		
Superintendents	2,100.00		
Boiler and Engine Room Labor.....	748.62		
Valvemen Labor	1,825.25		
Repairs to Buildings—			
Labor	358.13		
Material	128.94		
Repairs to Apparatus—			
Labor	494.77		
Material	*381.77		
Repairs to Tools and Implements—			
Labor			
Material	*5.58		
Expense—			
Labor	7,987.11		
Material	1,327.83	16,268.89	
63rd St. Station—			
Coke—Material	1,701.25		
Water—Material	961.20		
Boiler and Engine Room Labor.....	3,484.50		
Valvemen Labor	83.20		
Repairs to Buildings—			
Labor	21.00		
Material	2.35		
Repairs to Apparatus—			
Labor	1,411.12		
Material	1,242.34		
Repairs to Tools and Implements—			
Labor			
Material	1.29		
Expense—			
Labor	1,550.61		
Material	219.75	10,678.61	
65th St. Station—			
Coke—Material	3,451.75		
Water—Material	309.40		
Boiler and Engine Room Labor.....	3,689.13		
Repairs to Buildings—			
Labor	135.59		
Material	7.55		
Repairs to Apparatus—			
Labor	440.44		
Material	879.27		
Repairs to Tools and Implements—			
Labor			
Material	5.16		
Expense—			
Labor	1,765.91		
Material	704.58	11,388.78	
Forward		$38,336.28	$3,403,031.

*Red ink in Original.

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Brought forward		$38,336.27	$3,403,031.11
111th St. Station—			
Coal—Material	2,301.03		
Coke—Material	3,366.10		
Water—Material	583.60		
Boiler and Engine Room Labor	4,521.39		
Valvemen Labor	822.38		
Repairs to Buildings—			
Labor	86.57		
Material	*.34		
Repairs to Apparatus—			
Labor	1,019.53		
Material	1,099.04		
Repairs to Tools and Implements—			
Labor			
Material			
Expense—			
Labor	2,633.06		
Material	868.73	17,303.09	
Inwood Station—			
Coal—Material	35.31		
Water—Material	4.10		
Valvemen	730.00		
Repairs to Buildings—			
Labor			
Material	13.30		
Repairs to Apparatus—			
Labor	30.56		
Material	3.25		
Repairs to Tools and Implements—			
Labor			
Material	82.68	889.20	**56,538.57
Forward.....			$3,459,569.68

**Memorandum—

Figures as given above showing Distribution reflect the accounts as recorded in our books. For the purpose of all our reports, the item of Distributing Stations' Expense $56,538.57 is charged to each Station's Distribution on the ratio that the Station make bears to the total make.

	Distribution.	Distributing Station Expense.	Total Distribution as Reported.
Fourteenth Street Station	11,283.19	7,941.88	19,225.07
Forty-second Street Station	1,916.51	6,604.34	8,520.85
Twenty-first Street Station	14,923.96	23,033.36	37,957.32
Forty-fourth Street Station	1,825.00	12,010.14	13,835.14
Ninety-ninth Street Station	1,906.68	6,948.85	8,855.53
Total	$31,855.34	$56,538.57	$88,393.91

*Red ink in Original.

5972

8698

Brought forward		$3,459,569.68
Profit and Loss Adjustment—		
Increase in Material and Supplies at the Stations.....	*$11,408.93	
Difference in price between Coke and Screenings.....	3,797.79	
Loss and Petty Cash Fund.....	100.00	
Miscellaneous	2.75	7,508.59
Experiments—		
This represents the cost to the Company to maintain a Chemical Laboratory at 21st Street Station for the purpose of testing, bettering and improving our product		
Labor and Material (outside Stations)—		3,030.08
As per detailed statement already presented showing the following results:		
New Amsterdam Gas Co.....2,124,644,788 c. f. at 35.05c	$744,625.48	
Standard Gas Light Co..... 394,298,939 c. f. at 33.14c	130,653.45	
Mutual Gas Light Co..... 261,716,265 c. f. at 36.54c	95,622.55	
Central Union Gas Co.....* 83,042,349 c. f. at 31.47c	26,138.41	
2,863,702,341 c. f. at 34.82c	$997,039.89	997,039.89
Total Station Cost.....		4,452,131.26
Distributing Expense—		
Including General and Administrative Expense, Meter Setting, Jobbing, Repairs, Street Lamps Maintenance, Insurance, Advertising, Interest, Taxes, Contingent Expense, etc....		4,512,355.72
Fixed Charges—		972,423.44
Total		$9,936,910.42

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ALL STATIONS—SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR 1905.

	Cubic Feet.		
Gas Made	10,657,810,000		
Gas Sold (based on a leakage of 2.24 per cent)	10,419,461,426		
		*Cost per M. Made.	Cost per M. Sold.
Coal Used—345,707.16 tons, at 3.56 per ton	$1,230,442.89	11.54	11.81
Labor Handling	49,150.07	00.46	00.47
Cartage	18,222.89	00.17	00.18
	$1,297,815.85	12.17	12.46
Less Residuals—			
Coke—			
167,071.70 loads at $2.02 per load 111,878.37 tons at $3.02 per ton	$338,390.91		
Less—			
Labor handling 35,678.39			
Cartage 11,164.97			
46,843.36	291,457.55	02.73	02.80
Tar, 229,282.81 tons, Carbonized at 28.59c	65,546.70	00.62	00.63
Amm. Liq., 4,896,886 lbs. at 1.34c	65,849.65	00.62	00.63
Carbon, 485,720 lbs. at 1.00c	4,857.20	00.04	00.05
Spent Oxide, 5,577,034 lbs. at 0.11c	6,196.47	00.06	00.06
Oil Tar, 2,710,826 gals. at 1.93c	52,207.26	00.49	00.50
	486,114.83	04.56	04.67
Net Total	$811,701.02	07.61	07.79
Coke—			
29,706.19 loads at $2.1535 19,892.54 tons at 3.2160	63,972.09	00.60	00.61
Labor Handling	1,293.31	00.01	00.01
Cartage	43.87	....	....
	65,309.27	00.61	00.62
Fuel Oil Labor (Inc. Drip Oil Used in Mfg.)	4,424.70	00.04	00.04
Naphtha, 5,587 gals. at 04.38c	244.43	....	....
Gas Oil, 41,876,670 gals. at 04.23c	*1,769,968.42	16.61	16.99
Fuel Oil, 2,502 gals. at 02.00c	50.04	....	....
Lime, 62,374 bus. at 04.99c	3,114.02	00.03	00.03
Oxide, 121,485 bus. at 15.78c	19,173.35	00.18	00.18
Water, 22,684,200 c. f. at $1.00 per M.	22,684.20	00.22	00.22
Oil, Waste and Sundries	5,407.15	00.05	00.06
Cartage (Summary of Cartage Operations for the Calendar year hereto attached)	17,123.60	00.16	00.17
Gas Making Labor—			
Generator House Labor	67,259.55	00.63	00.65
Retort House Labor	218,174.85	02.05	02.09
Boiler House Labor	36,602.39	00.34	00.35
Purifying House Labor	13,959.40	00.13	00.13
Superintendence	36,210.43	00.34	00.35
At 21st on account of 14th St. Oil Gas	10,335.42	00.10	00.10
	3,101,832.24	29.10	29.77
Repairs (Including Labor and Material)	210,326.56	01.98	02.02
Expense (Including Labor and Material)	59,016.97	00.55	00.57
Distribution (Including Labor and Material)	88,393.91	00.83	00.85
Experiments (Including Labor and Material)	3,030.08	00.03	00.03
P. & L. Adjustment	*7,508.39	00.07	00.07
Forward	$3,455,091.37	32.42	33.16

*Red ink in Original.

TO CLOSE IN CENT

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			Cost per M. Made.	Cost per M. Sold.
Brought forward		$3,455,091.37		33.17
Labor and Material (Outside Stations) as per detailed statement already presented, showing the following result:				
	Cubic Feet.			
New Amsterdam Gas Co.	2,124,644,788 at 35.05c	744,625.48		
Standard Gas Light Co.	394,298,939 at 33.14c	130,653.45		
Mutual Gas Light Co.	261,716,265 at 36.54c	95,622.55		
Central Union Gas Co.	83,042,349 at 31.47c	26,138.41		
	2,863,702,341 at 34.82	$997,039.89	997,039.89	34.82
Total Station Cost			4,452,131.26	33.52
Distribution Expense—Including General and Administrative Expense, Meter Setting, Jobbing, etc.; Repairs Street Lamp Maintenance, Insurance, Advertising, Interest, Taxes, Contingent Expense, etc....			4,512,355.72	33.97
Fixed Charges			972,423.44	07.32
			$9,936,910.42	74.81

SUMMARY OF CARTAGE OPERATIONS—CALENDAR YEAR 1905

Our Own Carts.			
6388.394 Days Single Cart	at $3.25	$20,762.28	
28.80 days Double Cart	at 5.50	158.40	20,920.68
National Coke and Coal Co's. Carts—			
263 loads	at 21.75c	57.20	
211 loads	at 22.70c	47.89	
23,125 loads	at 25.00c	5,781.25	
49 loads	at 85.00c	41.65	
8,255 loads	at 24.00c	1,981.20	
2,309 loads	at 50.00c	1,154.50	
65 loads	at $1.00	65.00	
9,228 1/2 loads	at 20.00c	1,845.70	
531 loads	at 18.00c	95.58	11,069.97
T. Cunningham Co.—			
116,714 tons	at 11.00c	12,838.54	
7,550 1/2 tons	at 16.00c	1,208.08	14,047.62
Miscellaneous—			
Being bills from various parties covering the cost of storing carbon, carting spent oxide, carting Oil, Tar, etc.....			517.06
			$46,555.33

CARTAGE AS ABOVE, SHOWN AS FOLLOWS—

Coal Cartage	18,222.89
Coke Cartage	11,164.97
Coke Cartage	43.87
General Cartage	17,123.60
	$46,555.33

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SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 1905

14TH STREET STATION.

	Cubic Feet.			
Gas Made	1,490,909,000			
Gas Sold (based on a leakage of 2.24 per cent)	1,457,682,653			
		Amount.	Cost per M. c. f. Made.	Cost per M. c. f Sold.
Coal—				
Used in Retorts, 123,773.37 tons	at $3.19	$394,907.04	26.48	27.09
Used at 21st St. Station for account of 14th St. Oil Gas, 62.02 Tons	at 4.36	270.66	00.02	00.02
Labor handling coal	$17,179.74			
Cartage handling coal	14,000.84	31,270.58	02.10	02.14
		426,448.28	28.60	29.25
Less Residuals—				
Coke—				
83,434.45 Loads	at $2.09			
55,871.28 Tons	at $3.12	174,219.31		
Cost to handle—				
Labor	$25,843.76			
Cartage	6,599.67	32,443.43		
		141,775.88	09.51	09.73
Tar—123,773.37 Tons of Coal Carbonized	at 28.59c	35,392.33	02.37	02.43
Ammoniacal Liquor, 2,623,809 lbs.	at 01.34c	35,244.20	02.36	02.41
Carbon, 216,955 lbs.	at 01.00c	2,169.55	00.15	00.15
Spent Oxide, 4,208,381 lbs.	at 00.11c	4,827.82	00.32	00.33
		219,409.78	14.71	15.05
Net Total		207,038.50	13.89	14.20
Coke used at 21st Street Station for account of 14th Street Oil Gas, 6.42 loads	at $2.243			
4.30 tons	at $3.349	14.40	....	....
Gas Oil, 3,381,667 gals.	at 04.22c	142,629.09	09.57	09.78
Oxide, 25,790 lbs.	at 17.42c	4,492.75	00.30	00.31
Water, 3,594,800 c. f.	at $1.00 per M. c. f.	3,594.80	00.24	00.25
Oil, Waste and Sundries		2,370.09	00.16	00.16
Cartage		2,443.71	00.16	00.17
Gas Making Labor—				
Retort House Labor		87,754.21	05.89	06.02
Boiler House Labor		6,033.72	00.41	00.41
Purifying House Labor		4,179.45	00.28	00.29
Superintendence		6,811.06	00.46	00.47
At 21st St. for account of 14th St. Oil Gas		10,335.42	00.69	00.71
		477,780.20	32.05	32.77
Repairs (including Labor and Material)		57,501.65	03.85	03.95
Expense (including Labor and Material)		10,067.74	00.67	00.69
Distribution (including Labor and Material)		19,463.93	01.31	01.34
		$564,813.52	37.88	38.75

5977 8703

SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 1905.
42D STREET STATION.

	Cubic Feet.			
Gas Made	1,239,245,000			
Gas Sold (based on a leakage of 2.24 per cent.)	1,211,783,364			
		Amount.	Cost per M. c. f. Made.	Cost per M. c. f Sold.
Coal—				
Used in Retorts, 105,509.44 tons	at $3.17	$334,699.17	27.01	27.62
Labor handling coal		18,326.06	01.48	01.51
Cartage handling coal		539.24	00.04	00.04
		353,564.47	28.53	29.17
ss Residuals—				
Coke—				
83,637.25 loads	at $1.9618			
56,007.09 tons	at $2.9296 $164,081.60			
Less—Cost to handle same—				
Labor	$9,834.63			
Cartage	4,565.30 14,399.93	149,681.67	12.08	12.35
Tar (Coal), 105,509.44 tons Carbonized	at 28.58c	30,154.37	02.43	02.49
Ammoniacal Liquor, 2,273,075 lbs.	at 01.35c	30,605.45	02.47	02.53
Carbon, 268,765 lbs.	at 01.00c	2,687.65	00.22	00.22
Spent Oxide, 1,368,654 lbs.	at 00.10c	1,368.65	00.11	00.11
		214,497.79	17.31	17.70
Net Total		139,066.68	11.22	11.48
Fuel Oil, 2,502 gals.	at 02.00c	50.04	....	....
Gas Oil, 2,083,413 gals.	at 04.16c	86,602.69	06.99	07.15
Lime, 62,125 bus.	at 04.99c	3,101.48	00.25	00.26
Oxide, 20,000 bus.	at 14.63c	2,926.24	00.24	00.24
Water, 3,059,300 c. f.	at $1.00 per M.	3,059.30	00.25	00.25
Oil, Waste and Sundries		792.89	00.06	00.07
Cartage		428.44	00.04	00.04
as Making Labor—				
Retort House Labor		130,420.64	10.52	10.76
Boiler House Labor		4,782.90	00.38	00.39
Purifying House Labor		4,668.31	00.38	00.38
Superintendence		4,822.42	00.39	00.40
		380,722.03	30.72	31.42
Repairs (including Labor and Material)		31,335.52	02.53	02.59
Expense (including Labor and Material)		11,312.29	00.91	00.93
Distribution (including Labor and Material)		8,719.40	00.71	00.72
		$432,089.24	34.87	35.66

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SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 1905. 21ST STREET STATION.

	Cubic Feet.		
Gas Made	4,356,120,000		
Gas Sold (based on a leakage of 2.24 per cent.)	4,258,542,912		
		Cost per M. c. f. Made.	Cost per M. c. f Sold.
Coal—Excluding coal used for 14th St. Station Oil Gas—	Amount.		
Used in Generators, 56,477.29 tons at $4.36	$246,502.76	05.66	5.79
Used under Boilers, 6,916.25 tons at 3.65	25,254.69	00.58	00.59
	271,757.40	06.24	06.38
Labor employed on Coal	5,544.25	00.13	00.13
Cartage employed on Coal	861.34	00.02	00.02
	278,162.99	06.39	6.53
Less Residuals—			
Oil Tar—1,403,046 gals.			
18,586 gals. (not sold owing to excessive quantity of water contained.)			
1,384,460 gals at 1.97c	27,294.43	00.63	00.64
	251,868.56	05.76	5.89
Coke used, 20,927.84 loads at $2.1578			
14,014.18 tons at 3.2224	45,159.20	01.03	1.06
Labor employed in handling	1,150.00	00.03	00.03
	46,309.20	01.06	1.09
Net Total	297,177.76	06.82	6.98
Fuel Oil Labor (including Drip Oil Labor if used in manufacturing)	1,609.19	00.04	00.04
Naphtha, 5,587 gals. at 04 3/8c	244.41	....	00.01
Gas Oil (including Gas Oil used for 14th St. Oil Gas)			
20,058,206 gals. at 4.26c	855,081.15	19.63	20.08
Lime, 249 bus. at 05.04c	12.54		....
Oxide, 41,840 bus. at 15.54c	6,497.10	00.15	00.15
Water, 9,230,200 c. f. at $1.00 per M. c. f.	9,230.20	00.21	00.21
Oil, Waste and Sundries	748.11	00.02	00.02
Cartage	9,037.91	00.23	00.23
Gas Making Labor—			
Generator House	38,165.42	00.88	00.90
Boiler House	11,837.63	00.27	00.28
Purifying House	2,590.07	00.06	00.06
Superintendence	10,443.99	00.24	00.24
Net Amount of Material and Labor	1,243,595.52	28.55	29.20
Repairs (including Labor and Material)	67,280.35	01.54	01.58
Expense (including Labor and Material)	20,733.99	00.48	00.49
Distribution (including Labor and Material)	38,655.23	00.89	00.91
Profit and Loss Adjustment	*1.25	....	....
	1,370,263.84	31.46	32.18
Experiments	3,030.08	00.07	00.07
	$1,373,293.92	31.53	32.25

*Red ink in Original.

SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 1913.

44TH STREET STATION.

	Cubic Feet.			
Gas Made	2,265,475,000			
Gas Sold (based on a leakage of 2.24 per cent.)	2,215,177,400			
		Amount.	Cost per M. c. f. Made.	Cost per M. c. f. Sold.
Coal—				
Used in Generators, 29,888.37 tons	at $4.34	$129,837.00	05.73	05.86
Used under Boilers, 2,178.32 tons	at $3.72	8,101.45	00.36	00.37
		137,939.35	06.09	06.23
Labor employed on Coal		3,815.19	00.17	00.17
Cartage employed on coal		243.59	00.01	00.01
		141,998.13	06.27	06.41
Less *Residuals*—				
Oil Tar, 857,616 gals.				
5,179 gals. (not sold owing to excessive quantity of water contained).				
852,437 gals.	at 01.86c	13,891.95	00.70	00.72
		126,116.18	05.57	05.69
Coke Used—				
8,064.33 loads	at $2.2432			
5,400.22 tons	at $3.3528	18,106.23	00.80	00.82
Labor in handling Coke		50.38	....	....
		18,156.61	00.80	00.82
		144,272.79	06.37	06.51
Fuel Oil Labor (including Drip Oil Labor if used in Mfg.)		1,153.76	00.05	00.05
Gas Oil, 10,573,059 gals.	at 04.23c	446,873.18	19.73	20.17
Oxide, 24,385 lbs.	at 15.07c	3,893.51	00.17	00.18
Water, 4,444,400 c. f.	at $1.00 per M.	4,444.40	00.20	00.20
Oil, Waste and Sundries		792.71	00.03	00.04
Cartage		2,095.04	00.09	00.09
Gas Making Labor—				
Generator House Labor		18,705.17	00.82	00.84
Boiler House Labor		8,586.21	00.38	00.39
Purifying House Labor		881.45	00.04	00.04
Superintendence		7,495.00	00.33	00.34
Net amount of Labor and Material		639,194.10	28.21	28.85
Repairs (including Labor and Material)		26,017.14	01.19	01.28
Expense (including Labor and Material)		8,580.53	00.38	00.39
Distribution (including Labor and Material)		14,198.10	00.63	00.64
Profit and Loss, Adjustment		100.00	....	....
		2688,589.89	30.41	31.19

SUMMARY OF OPERATIONS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 1905—99TH STREET STATION.

	Cubic Feet.		
Gas Made	1,326,061,000		
Gas Sold (based on a leakage of 2.24 per cent.)	1,276,384,025		
	Amount.	Cost per M. c. f. Made.	Cost per M. c. f Sold.
Coal—			
Used in Generators, 19,597.00 tons at $4.50	$86,068.91	06.50	06.74
Used under Boilers, 1,305.10 tons at $3.06	4,800.36	00.37	00.38
	90,869.27	06.96	07.12
Labor employed on Coal	4,284.83	00.33	00.33
Cartage employed on Coal	2,487.88	00.19	00.20
	97,641.98	07.48	07.65
Less Residuals—			
Oil Tar—474,448 gals.			
519 gals. (not sold owing to the excessive quantity of water contained.)			
473,929 gals. at 01.90c	9,030.88	00.69	00.71
	88,611.10	06.79	06.94
Coke—			
707.62 loads at 97.82c			
473.85 tons at $1.46.09	692.26	00.05	00.05
Labor in handling	92.93	00.01	00.01
Cartage in handling	43.87	....	....
	829.06	00.06	00.06
	89,440.16	06.85	07.01
Fuel Oil Labor (including Drip Oil if used in Mfg.)	1,641.75	00.13	00.13
Gas Oil, 5,779,427 gals. at 04.13c	238,782.31	18.28	18.71
Oxide, 9,500 bus. at 14.35c	1,363.73	00.10	00.11
Water, 2,355,500 c. f. at $1.00 per M.	2,355.50	00.18	00.18
Oil Waste and Sundries	703.33	00.05	00.06
Cartage	2,217.60	00.17	00.17
Gas Making Labor—			
Generator House Labor	10,588.96	00.80	00.81
Boiler House Labor	5,451.91	00.42	00.43
Purifying House Labor	1,640.16	00.13	00.13
Superintendence	6,534.96	00.50	00.51
Net Amount of Labor and Material	360,540.39	27.60	28.25
Repairs (including Labor and Material)	14,175.44	01.08	01.11
Expense (including Labor and Material)	8,322.40	00.64	00.65
Distribution (including Labor and Material)	9,064.78	00.70	00.71
	$392,103.01	30.02	30.72

COMPLAINANT'S EXHIBIT 258

Based Upon Enriched Coal Gas, With Only

COST OF COAL GAS—IMPROVED WORKS

	Cost per ton	Yield Gas	Cost per M. ¢	
Bituminous Coal	$3.20	10,600 cf	30.2	.....
Cost of unloading	.10	"	1.44	0.940
Cost of charging	.254	"	2.24	.....
Cost of drawing coke				
Cost of drawing, yarding, quenching	.254	"	2.24	.....
Labor, gas making and purifying.			3.00	
			36.12	
Superintendence			.50	
			36.62	
Coke made and breeze 66% = 1320# at $4.00 per ton	$2.64			
Used as fuel 20%	.538			
	$2.102	29.80	19.80	.....
Tar 12 gallons at 5c	.600	5.65	.56	43.16
Ammonia liquor	.500	4.71	.47	20.83
		30.16	30.16	22.33
			6.46	

This gas will be of about 14 candle power.

Enriched with oil gas to 22 candles		*36.62
Would take of oil at 4¢.232 gallons	8.46	* 4.50
30 Pr. Ct. water gas with oil gas 225 cf		* .75
Generator coal at 20# per M	1.00	* .25
Labor making oil and water gas 3¢ per M	.30	* .37
Repairs to apparatus and buildings	4.50	* .17
Purifying material, lime	.75	* .50
Oxide	.25	*43.16
Oil and Waste	.37	*30.16
Water	.17	*13.04
General Expense of work	.50	* 8.46
Repairs to oil gas apparatus at 2¢ per M	0.50	* 1.
	23.26	* .50
		*23.00

Following lines of Central Union.

22.33 36.62

COMPLAINANT'S EXHIBIT 271.

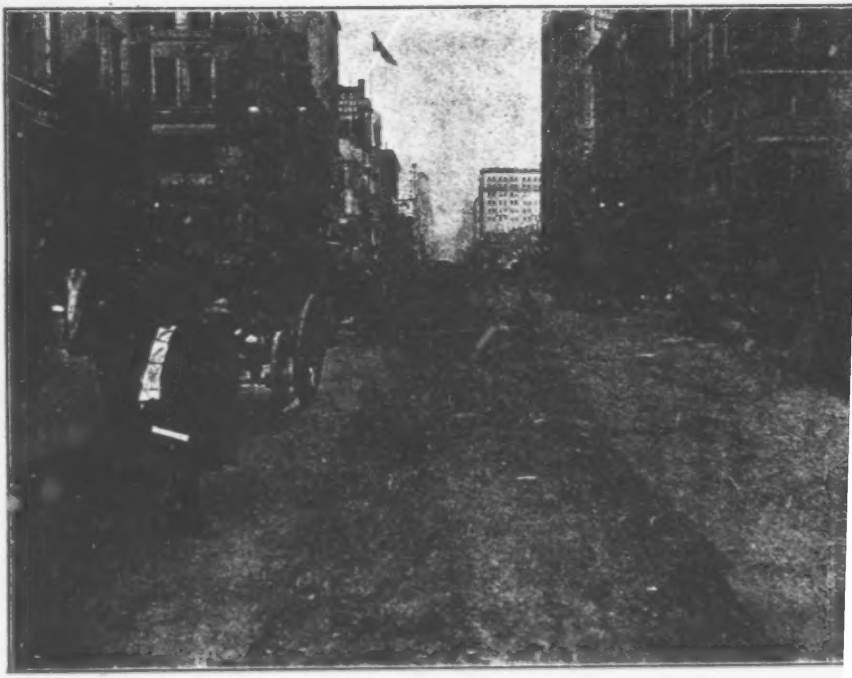
November 23, 1906.

Third Avenue, W. S.

45 ft. S. S., e. 14th St.; width, 9 ft. 0 in.; 24 in. S. W. Main. Edgerton's trench, width, 3 ft. 0 in.; Consolidated Gas Co., trench, width, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 272.

November 24, 1906.

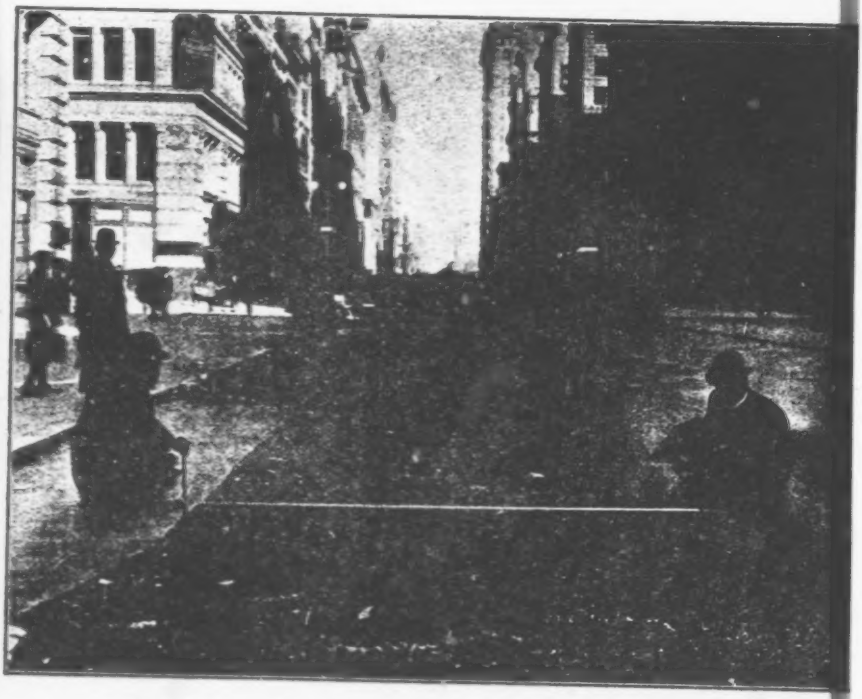


Fifth Ave., S. of Twenty-first St., Looking North.

Tape in front, No. 160; cut shown varies from 7 ft. 4 in. to 8 ft. 1 in.; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Con. Gas. Co., width trench, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 273

November 24, 1896.



Fifth Ave., Bet. Seventeenth and Eighteenth Sts., Looking North.

Width of cut, 9 ft. 10 in.; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Consolidated Gas Co., width trench, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 274.

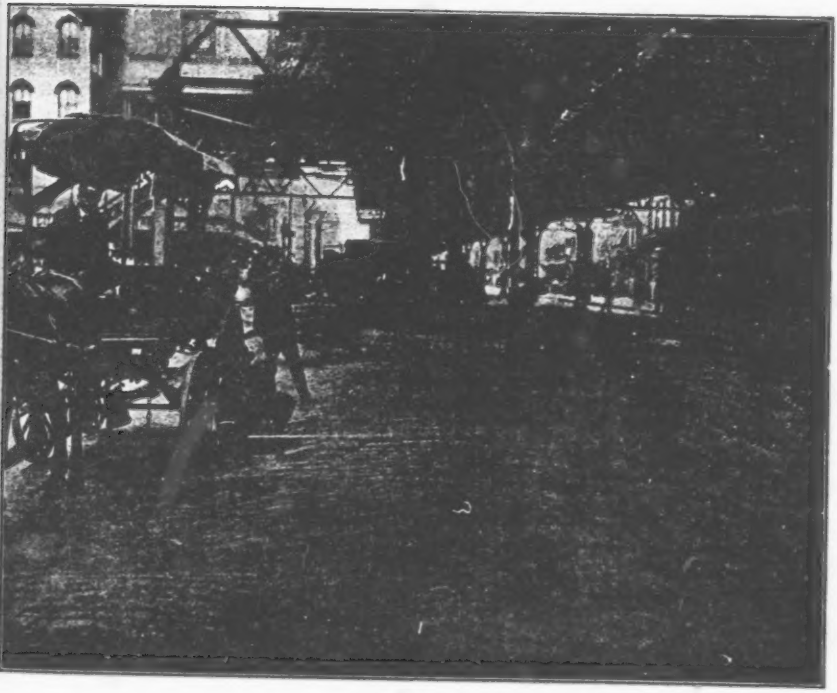
November 24, 1906.

Fifth Ave., S. S. c. Twenty-first St., Looking North.

Width, 8 ft. 1 in.; 24 ft. S. W. Main; Edgerton's width trench, 3 in. 0 ft.; Consolidated Gas. Co., width trench, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 275.

November 24, 1906.

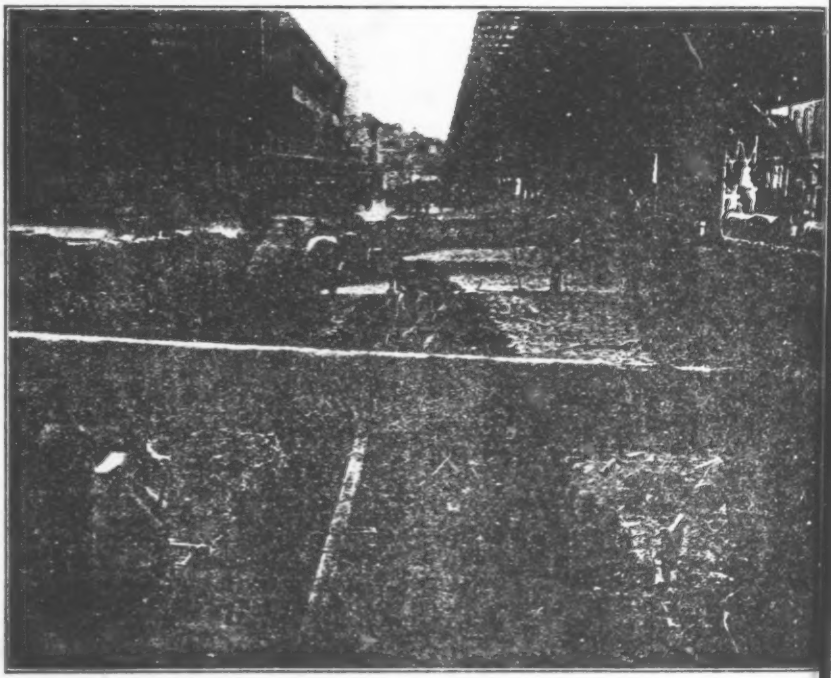


Third Ave., W. S., Looking North.

50 ft. S. S. cor. Fourteenth St.; Width, 9 ft. 0 in.; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Consolidated Gas Co., width trench, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 276.

November 24, 1906.

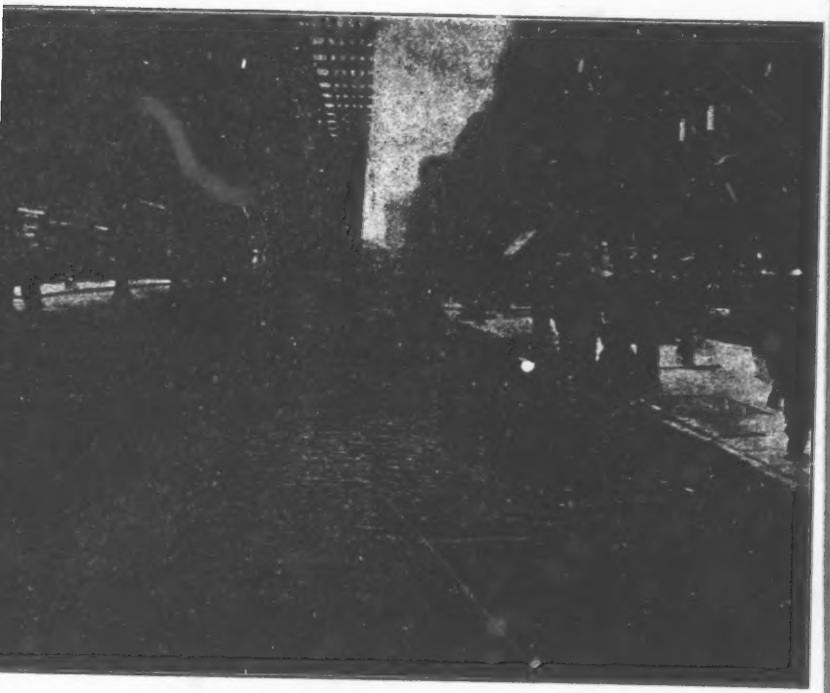


Ninth Ave., E. S., 50 ft. N. N. C. Sixteenth St., Looking South.

Trench for 36 in. Main—Water; width, 7 ft. 3 in.; Edgerton's, width trench, 4 ft. 0 in.; Consolidated Gas Co., width trench, 6 ft. 6 in.

COMPLAINANT'S EXHIBIT 277.

November 24, 1906.



Third Ave., W. S., 90 ft. N. N., C. Thirteenth St.,
Looking South.

Width, 12 ft. 9 in.; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Consolidated Gas Co.'s, width trench, 5 ft. 0 in.

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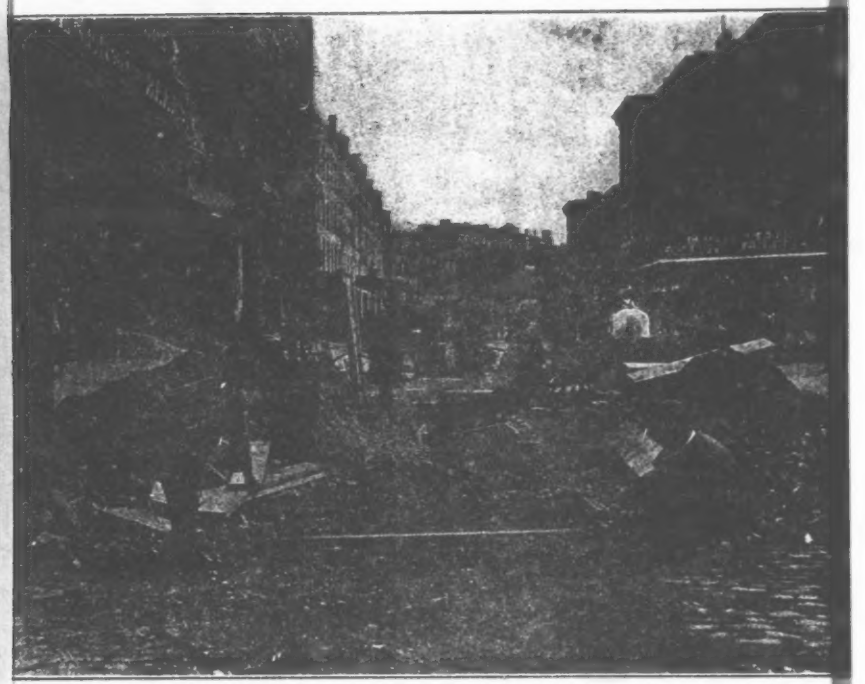
COMPLAINANT'S EXHIBIT 278.

November 24, 1906.

Gansevoort, W. of Hudson (12 ft. W. W. Co.),
Looking East.

COMPLAINANT'S EXHIBIT 279.

November 24, 1906.

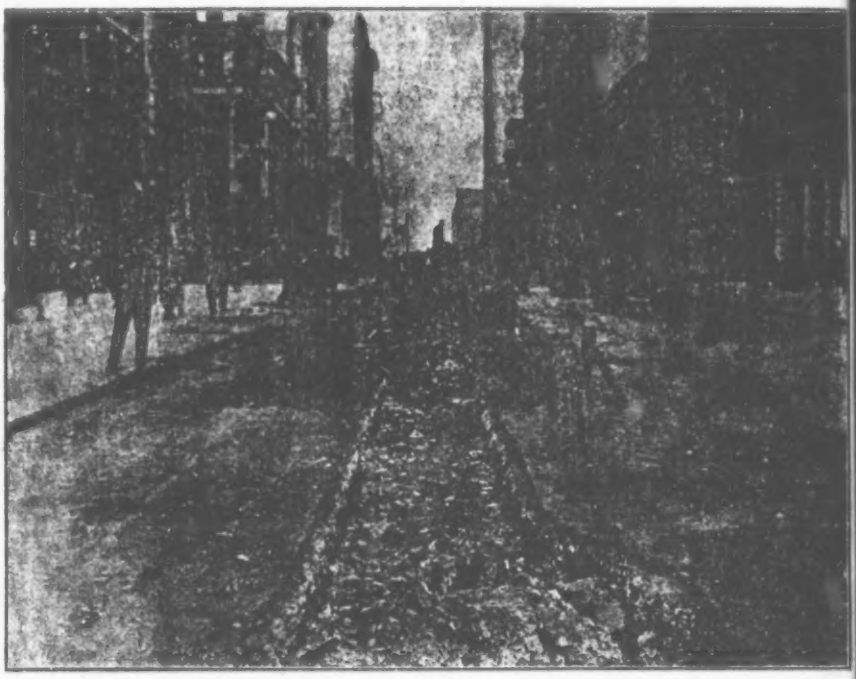


Gansevoort, W. of Hudson (24 ft. W. W. Co.),
Looking East.

8717 5991 1730

COMPLAINANT'S EXHIBIT 280.

November 24, 1906.



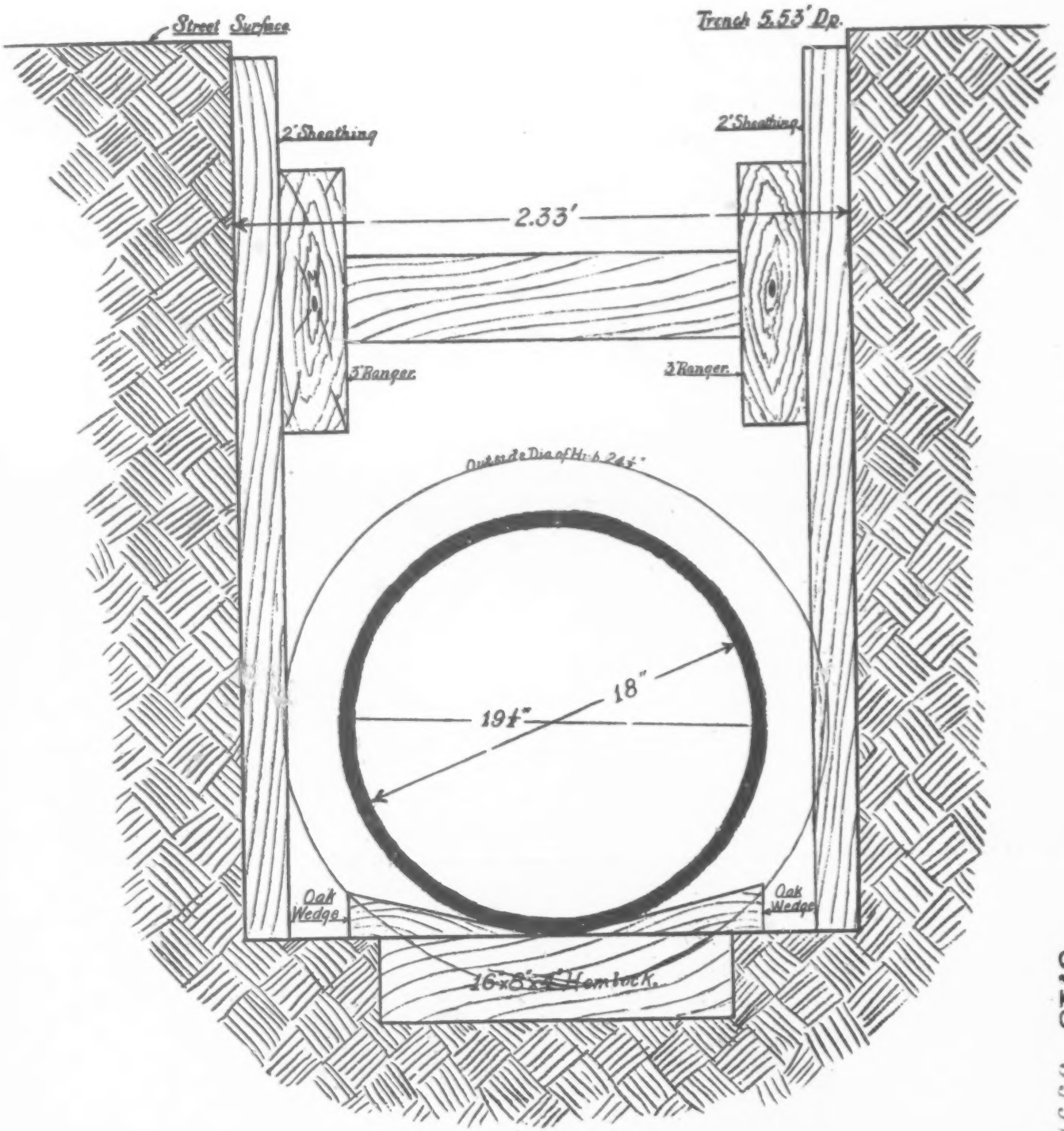
Fifth Ave., 80 ft. S. S., C. Nineteenth St., Looking North.

Width of Asphalt Trim, 6 in. on West Side; 5 in. on East Side; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Consolidated Gas Co., 5 ft. 0 in.

1730 A

COMPLAINANT'S EXHIBIT 281

January 14, 1907

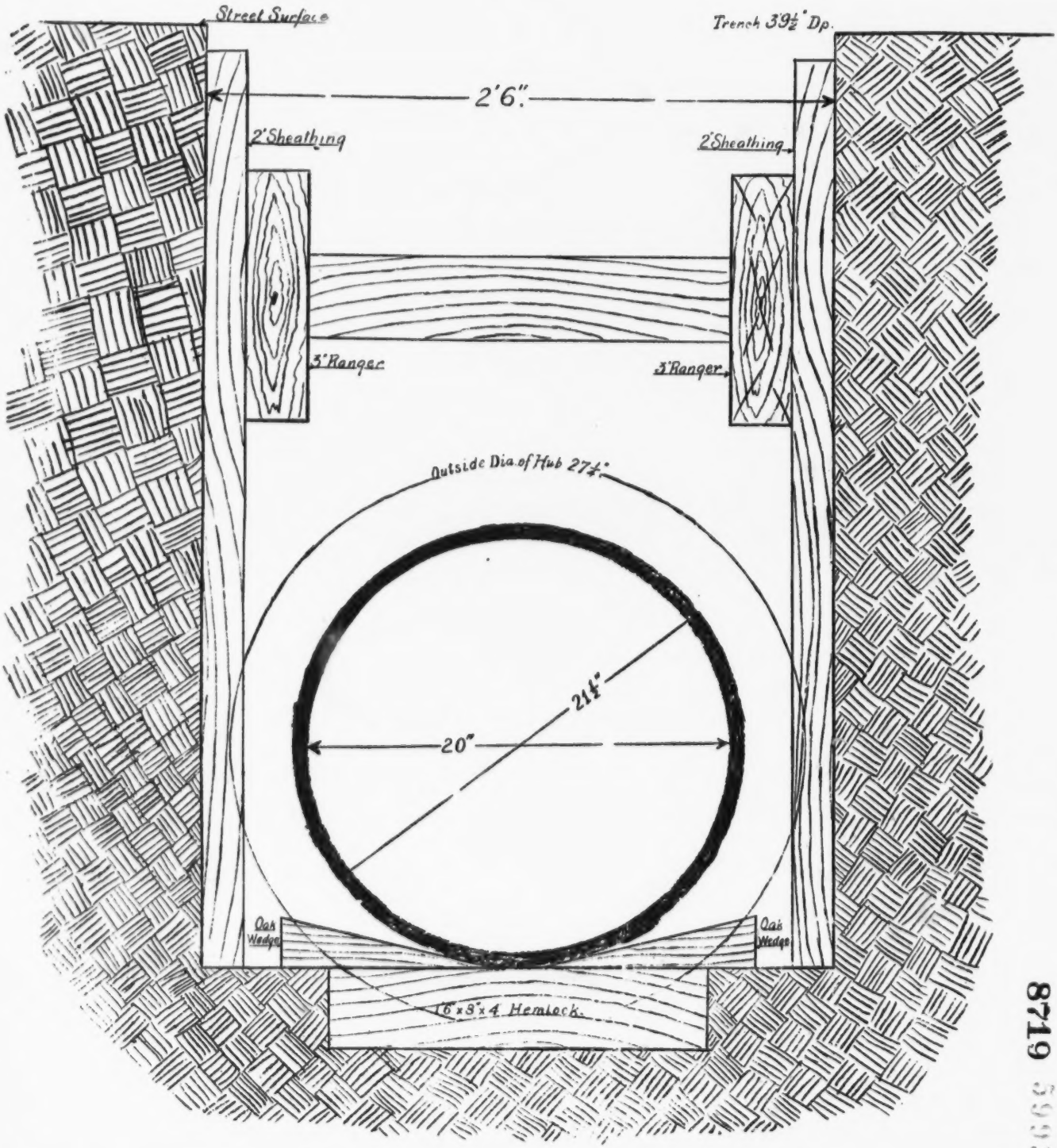


8218 5992

1730 B

COMPLAINANT'S EXHIBIT 282

January 14, 1907



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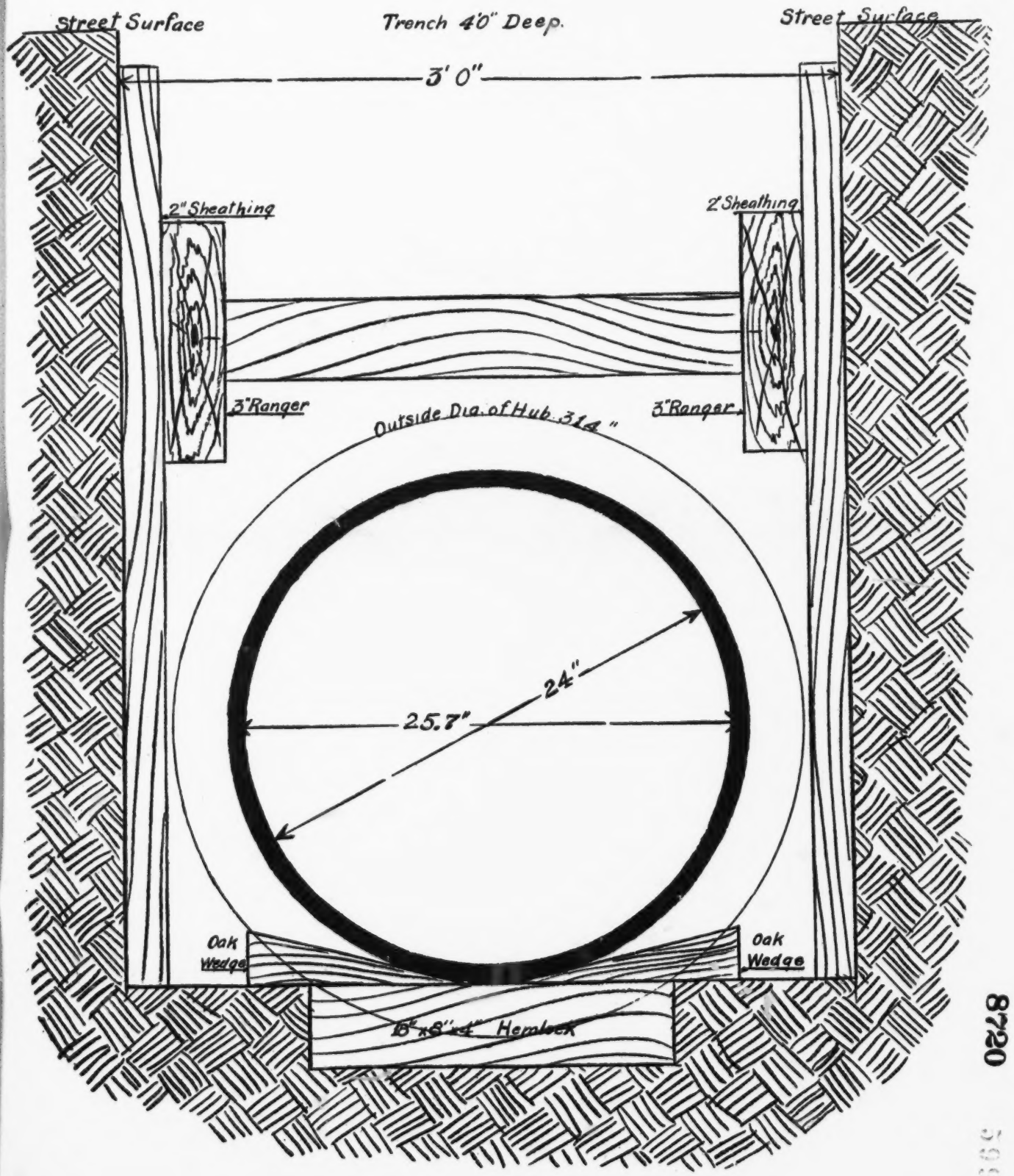
1730 B-1

COMPLAINANT'S EXHIBIT 283



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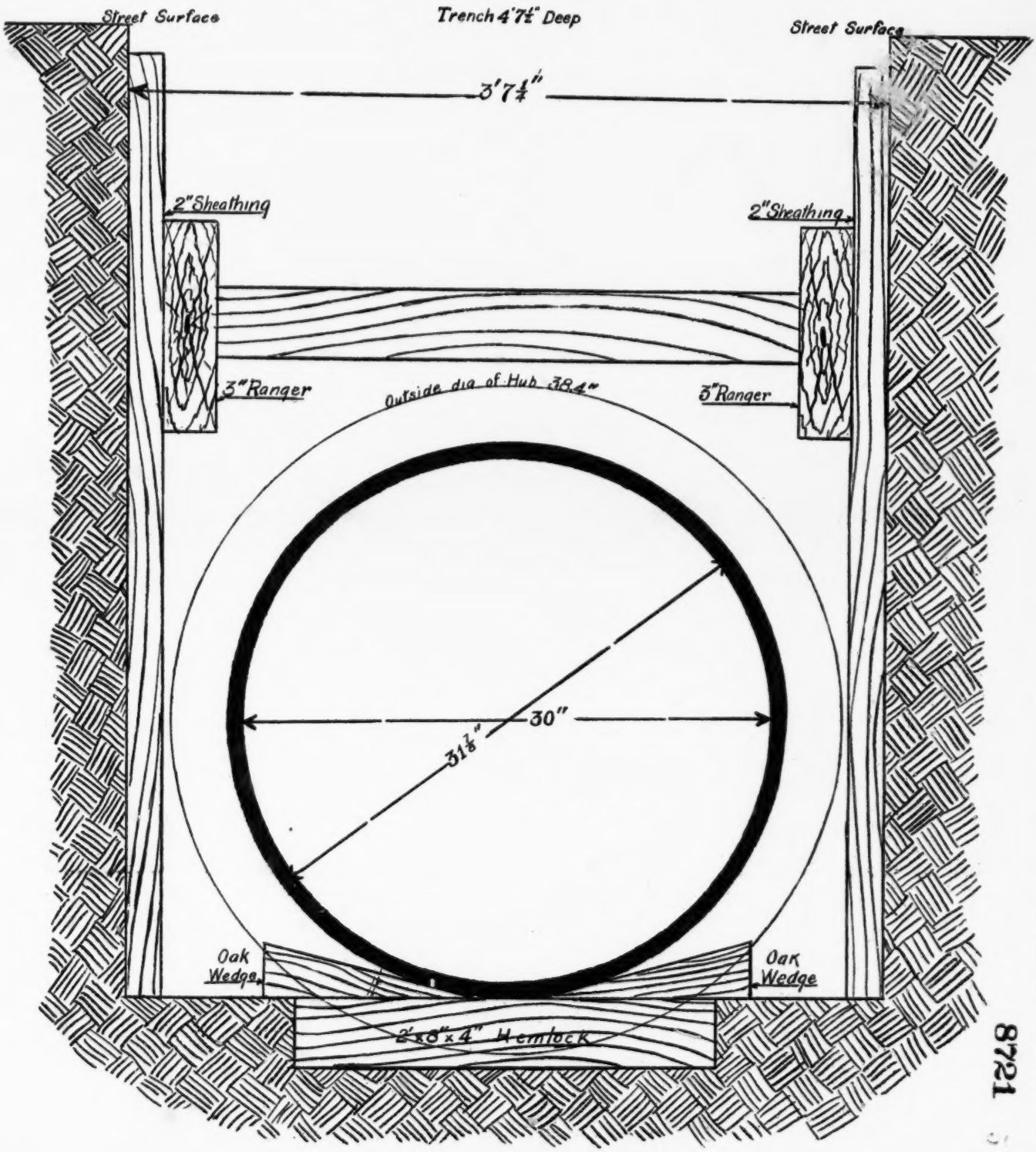
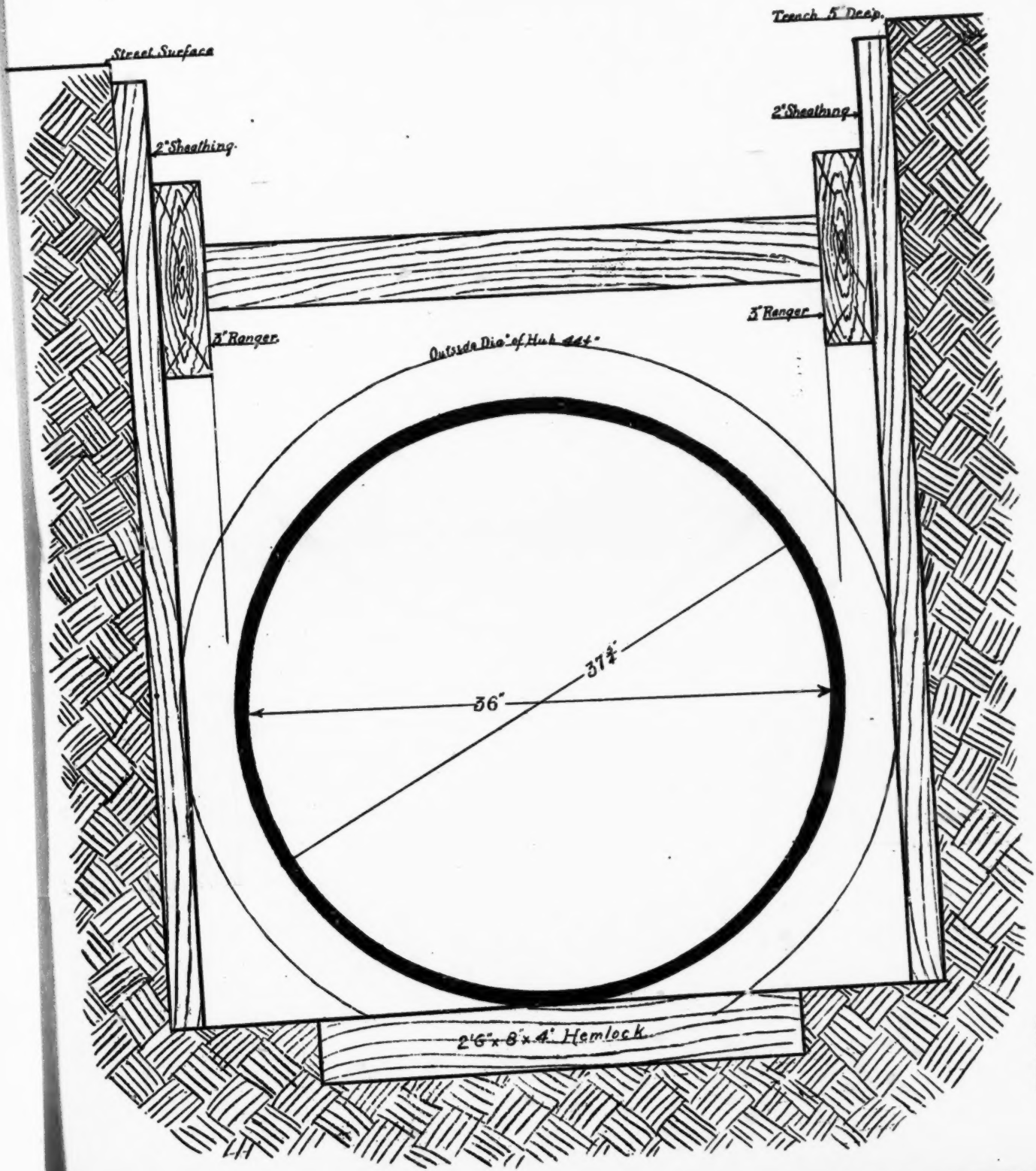
1730 B-2

COMPLAINANT'S EXHIBIT 284



8721

COMPLAINANT'S EXHIBIT 285



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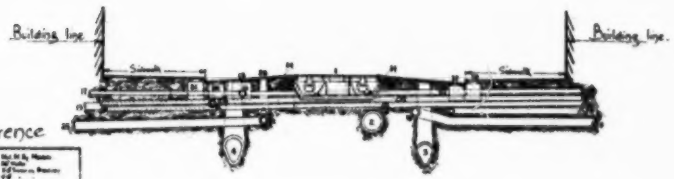
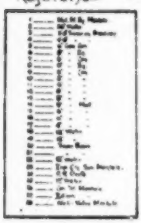
COMPLAINANT'S EXHIBIT 286.

Broadway at Bleecker St.

looking North.



Reference



Scale of Feet

5998

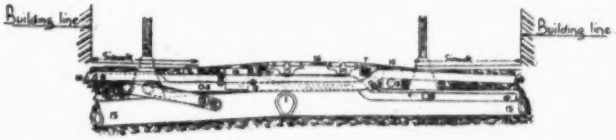
8724

1732

COMPLAINANT'S EXHIBIT 287.

—W. Broadway at Canal St —

— looking North. —

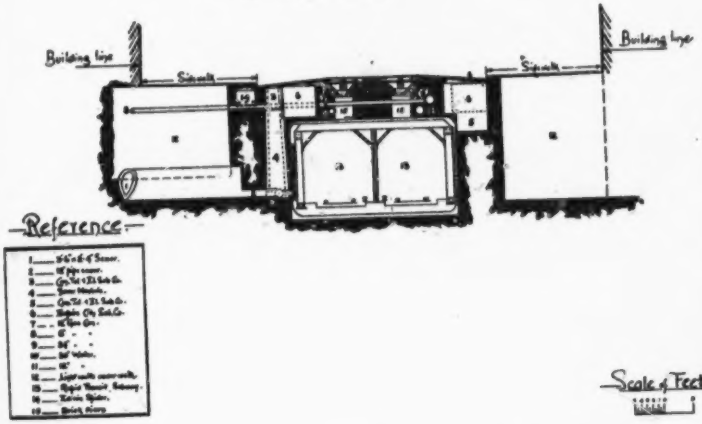


Reference —

Scale of Feet.

POOR

COMPLAINANT'S EXHIBIT 288.



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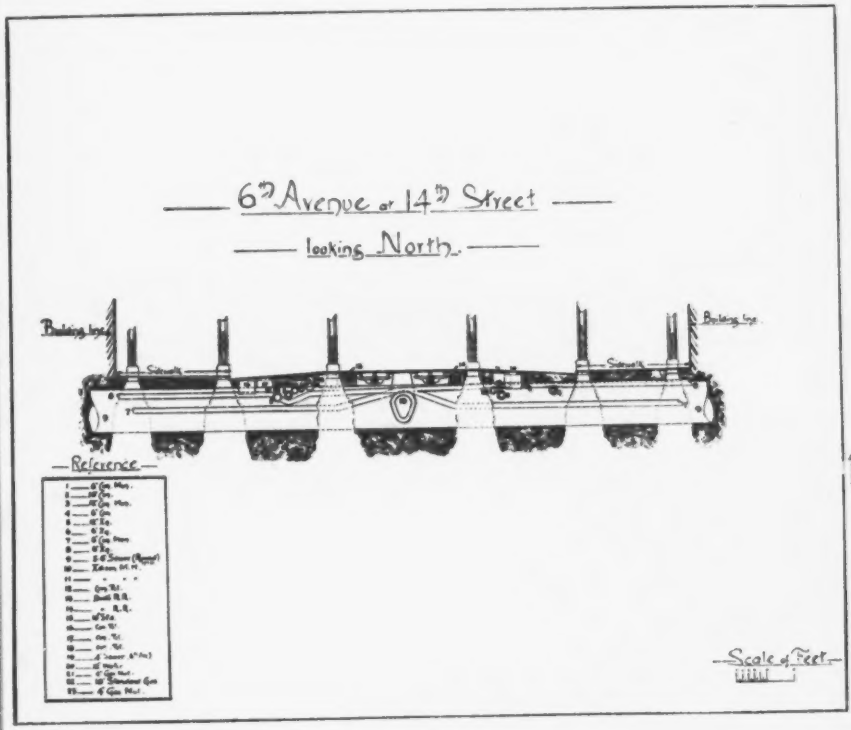
1734

COMPLAINANT'S EXHIBIT 289.



6001

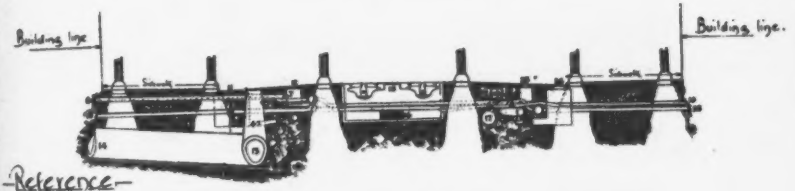
1735

8727

COMPLAINANT'S EXHIBIT 290.

3rd. Avenue at 14th St.

looking North.



Reference

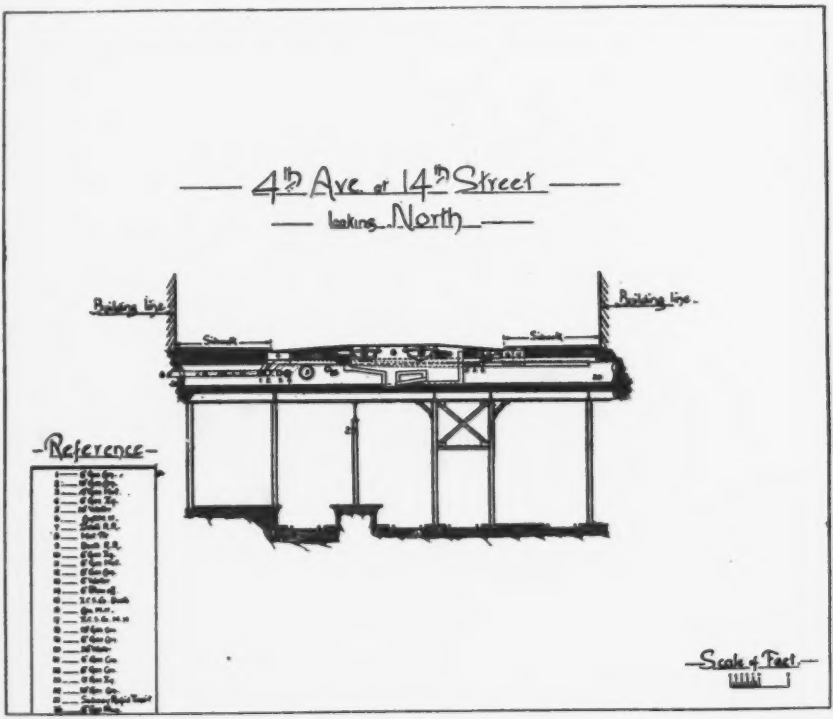
Scale of Feet

6652

8728

1736

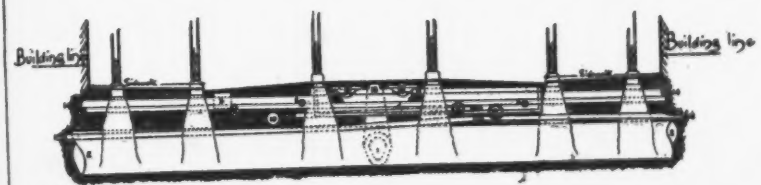
COMPLAINANT'S EXHIBIT 291.



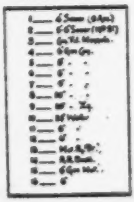
COMPLAINANT'S EXHIBIT 292

9th Ave. at 14th Street

looking North



Reference

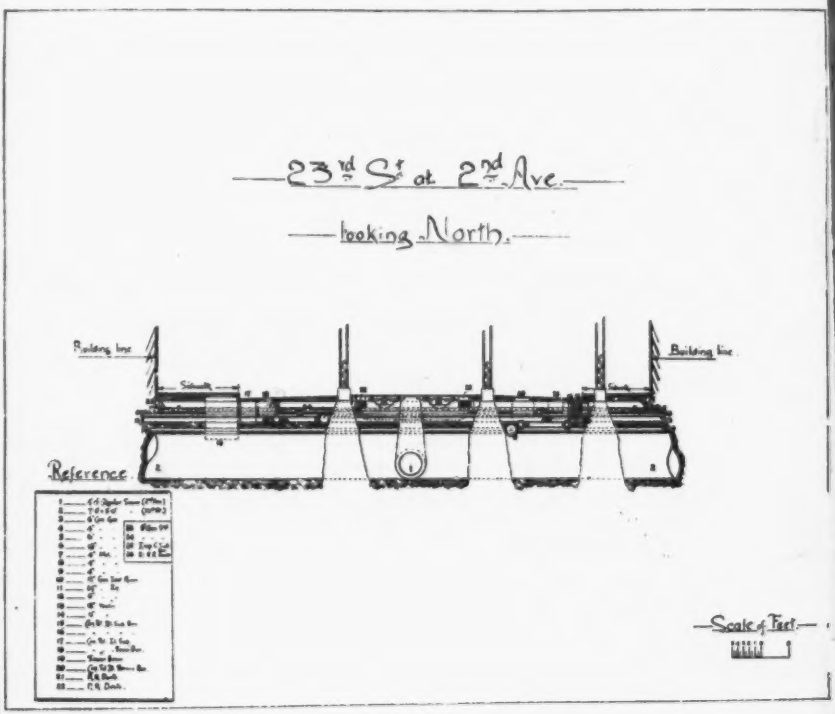


Scale of Feet

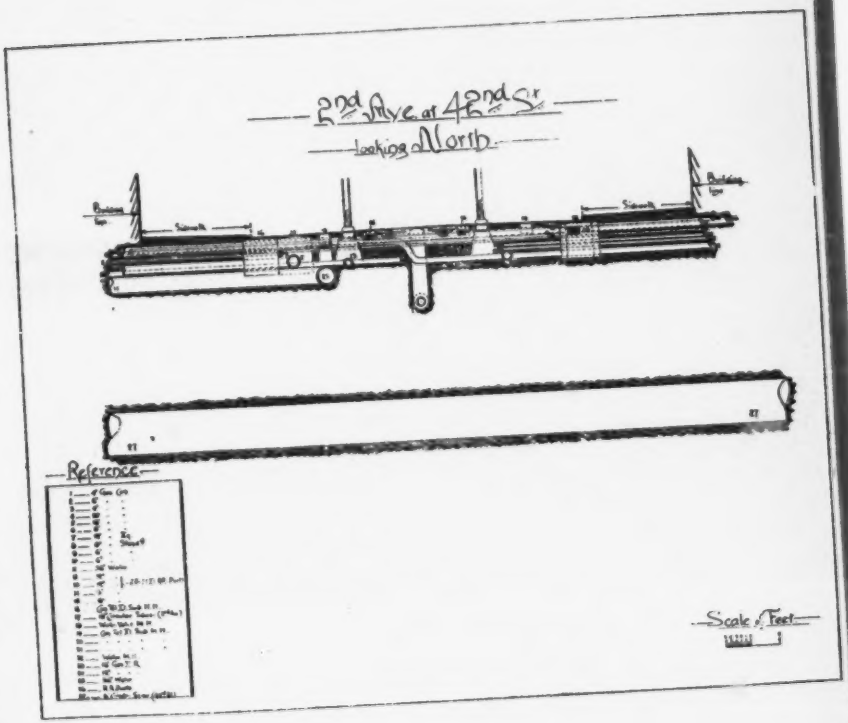
6034

8730

COMPLAINANT'S EXHIBIT 293.



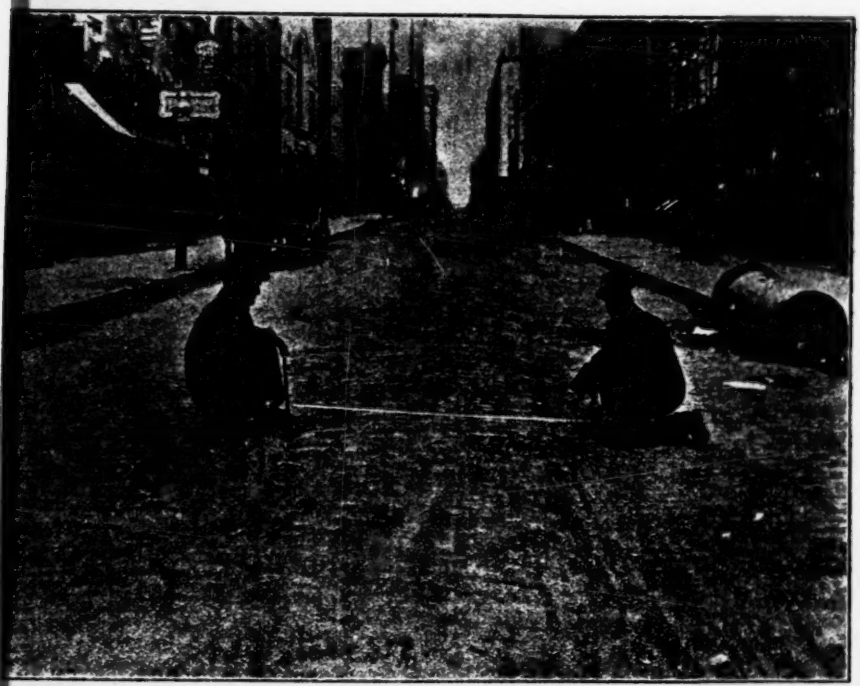
COMPLAINANT'S EXHIBIT 294.



8732 1740

COMPLAINANT'S EXHIBIT 295.

November 24, 1906.

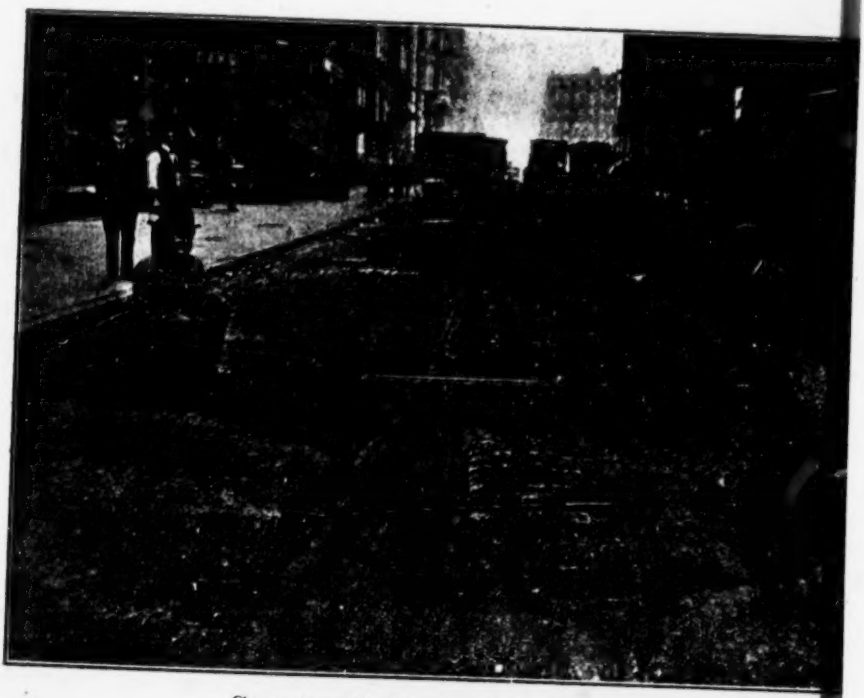


Thirteenth St., Looking West.

70 ft. W. W., C. Third Ave.; width, 5 ft. 10 in.; 24 in. S. W. Main; Edgerton's, width trench, 3 ft. 0 in.; Consolidated Gas Co., width trench, 5 ft. 0 in.

COMPLAINANT'S EXHIBIT 296.

November 24, 1906.



Seventeenth St., Looking East.

280 ft. E. E., C. Fifth Ave.; width—on line of tape, 11 ft. 4 in.; on line of rule, 4 ft. 6 in.; 12 in. S. W. Main; Edgerton's, width trench, 2 ft. 4 in.; Consolidated Gas Co., width trench, 3 ft. 0 in.

6008

POC

8734 COMPLAINANT'S EXHIBIT 297.

303

ROBERT W. LOWBER AND WIFE

TO

THE MANHATTAN GAS LIGHT COMPANY.

Dated 26th Dec., 1855.

DEED.

THIS INDENTURE, made the twenty-sixth day of December in the year of our Lord one thousand eight hundred and fifty-five, BETWEEN ROBERT W. LOWBER of the City, County and State of New York, and ELIZABETH G. his wife, parties of the first part, and THE MANHATTAN GAS LIGHT COMPANY, of said City of New York, party of the second part, WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Thirty-three thousand dollars lawful money of the United States of America, to him in hand paid, by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, their successors and assigns, forever released and discharged from the same, by these presents, HAVE granted, bargained, sold, aliened, remised, leased, conveyed and confirmed, and by these presents Do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to their successors and assigns forever "ALL that certain piece or parcel of land situate, lying and being in the Eighteenth Ward of the City
8735 of New York and bounded and described as follows: Northerly by the center line of Sixteenth Street; Southerly by the center line of Fifteenth Street; Westerly by the center line of Avenue D, and Easterly by the East River; Containing eighteen (18) lots of ground numbered from six hundred and seventy-eight (678) to six hundred and ninety-five (695) both inclusive; Together with the bulkhead built along said East River from said center line of Fifteenth Street to the center line of Sixte-nth Street; And also all the right, title, interest, property and claim of the said parties of the first part in and to the water rights, water front, water privileges, wharfage, cranage, rights of wharfage and cranage, land covered with water, pre-emption or other rights to land which may hereafter be gained out of the East River by reason of any Grant or Extension of said City of New York or otherwise between the center lines of said Fifteenth Street and the center line of said Sixteenth Street as continued into said East River in front of the premises hereby conveyed, as laid down in the diagram herein particular reference being thereunto had;"

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining,

COPY

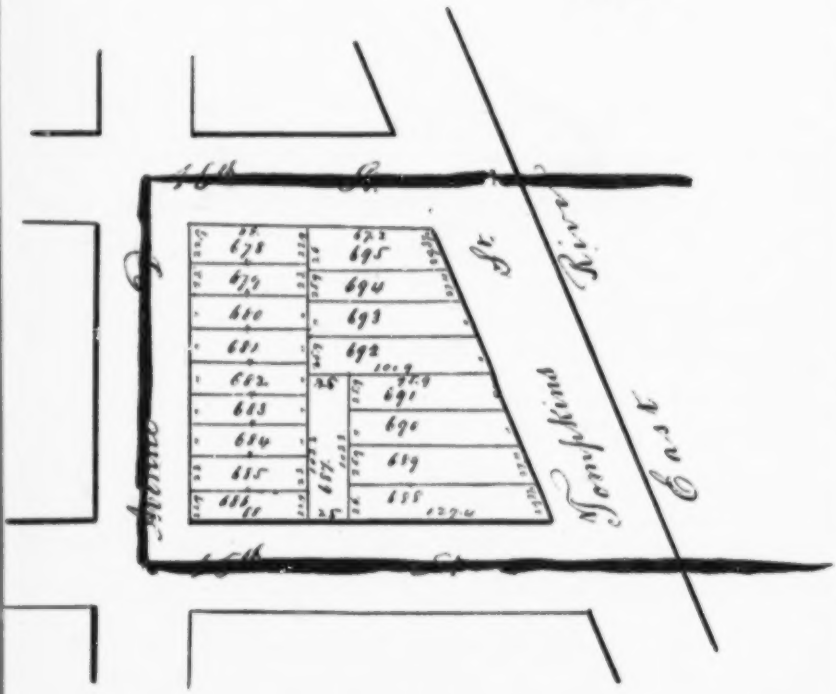
and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances; To Have and To Hold the above granted, bargained and described premises, with the appurte-
8736 nances, unto the said party of the second part, their successors and assigns, to their own proper use, benefit and behoof forever, Subject nevertheless to the operation and payment by said parties of the second part of a certain Indenture of Mortgage made and executed by said Robert W. Lowber to Eliphatet Nott, dated the first day of December, A. D. 1853, given to secure the payment of the sum of Forty thousand dollars and Recorded in the Office of the Register of the City and County of New York, in Liber 480 of Mortgage, at page 199, as will more fully appear, reference being thereunto had, and which is the same mortgage mentioned in a Deed of even date herewith made by the parties of the first part to the party of the second part of the Block of ground between Avenue C and Avenue D and Fifteenth Street and Sixteenth Street.

AND the said parties of the first part for themselves, their heirs, executors and administrators, do covenant, grant and agree, to and with the said party of the second part, their successors and assigns, that the said Robert W. Lowber at the time of the sealing and delivery of these presents, was lawfully seized in his own right of a good, absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority, to grant, bargain, sell and convey the same, in manner and form aforesaid. And that the said party of the second part, their successors and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit,
8737 trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever. And also that the said parties of the first part, and their heirs, and all and every other person or persons whatsoever, lawfully or equitably deriving any estate, right, title or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said parties of the second part, their successors and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting

COPY

1747

8739



Recorded in the office of the Register of the City and County of New York, in Liber 693 of Cons., page 640, February 5, 1856, at 40 min. past 2 P. M.

Examined by

JOHN J. DOANE,
Regr.

and confirming the premises hereby intended to be granted, in and to the said parties of the second part, their successors and assigns for ever, as by the said parties of the second part, their successors or assigns, or their counsel learned in the law, shall be reasonably devised, advised or required.

And the said parties of the first part their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their successors and assigns, against the said parties of the first part, and their heirs, and against all and every per-
8738 son and persons whosoever, lawfully claiming or to claim the same, shall and will Warrant, and by these presents forever Defend.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

ROBERT W. LOWBER. [L. S.]
ELIZABETH G. LOWBER. [L. S.]

The words "successors and assigns" and "successors" on first and second pages interlined before signing.

Sealed and delivered in presence of

JAMES P. HYATT.

State of New York,
City and County of New York, ss:

On this Fourth day of February in the year of our Lord one thousand eight hundred and fifty-six before me personally came Robert W. Lowber and Elizabeth G., his wife, to me known to be the individuals described in, and who executed the within conveyance, who acknowledged that they executed the same, and the said Elizabeth G., in a private examination by me, separate and apart from her Husband, acknowledged that she executed the same freely without any fear or compulsion of the said Husband.

JAMES P. HYATT,
Comm. of Deeds.

(Here follows facsimile marked p. 8739.)

8740 COMPLAINANT'S EXHIBIT 298.

303

ROBERT W. LOWBER AND WIFE

TO

THE MANHATTAN GAS LIGHT COMPANY.

Dated 26th December, 1855.

DEED.

THIS INDENTURE, made the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and fifty-five, BETWEEN ROBERT W. LOWBER, of the City, County and State of New York, and ELIZABETH G., his wife, parties of the first part, and THE MANHATTAN GAS LIGHT COMPANY, of the City of New York, party of the second part, WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Ninety-two thousand dollars lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, their successors and assigns, forever released and discharged from the same, by these presents, HAVE granted, bargained, sold, aliened, remised, released and discharged from the same, by these presents Do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to their successors and assigns forever ALL that certain Block of ground comprising Fifty-
8741 eight Lots numbered on the diagram herein by the numbers three hundred and seventy-seven (377) to the number four hundred and thirty-four (434), both inclusive, lying and being in the Eighteenth Ward of the City of New York, and bounded and described as follows:

Westerly by Avenue C, two hundred and six feet and six inches; Easterly by Avenue D, two hundred and six feet and six inches; Northerly by Sixteenth Street, six hundred and seventy-six feet, and Southerly by Fifteenth Street, six hundred and seventy-six feet, as laid down in said diagram, TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances; TO HAVE AND TO HOLD the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, their successors and assigns, to their own proper use, benefit and behoof

forever, Subject however to the operation and payment of a certain Indenture of Mortgage dated the first day of December, A. D 1853, made and executed by Robert W. Lowber to Eliphatet Nott, to secure the payment of the sum of Forty thousand dollars and interest, and recorded in the Office of the Register of the City and County of New York, in Liber 480 of Mortgages, at page 199, which said sum of Forty thousand dollars and interest thereon from the 1st
8742 day of December, 1855, makes part of the purchase money herein mentioned and the payment thereof hereby assumed; And the said parties of the first part for themselves, their heirs, executors and administrators, doth covenant, grant and agree, to and with the said party of the second part, their successors and assigns, that the said Robert W. Lowber at the time of the sealing and delivery of these presents, was lawfully seized in his own right of a good, absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority, to grant, bargain, sell and convey the same, in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, molestation, eviction, or disturbance of the said party of the first part, his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same: And that the same now are free, clear, discharged and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever. And also that the said party of the first part, and their heirs, and all and every other person or persons whatsoever, lawfully or equitably deriving any estate, right, title or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and
8743 charges in the law, of the said party of the second part, their successors and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, their successors and assigns for ever, as by the said party of the second part, their successors or assigns, or their counsel learned in the law, shall be reasonably devised, advised or required.

And the said parties of the first part, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their successors and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will Warrant, and by these presents forever Defend.

IN WITNESS WHEREOF, The said parties have hereunto set their hand and seals the day and year first above written.

ROBERT W. LOWBER. [L. S.]
ELIZABETH G. LOWBER. [L. S.]

The words "succes-ors and assigns" and "successors" on first page and the words "successors" in few places on second page interlined before signing.

Sealed and delivered in presence of

JAMES V. HYATT.

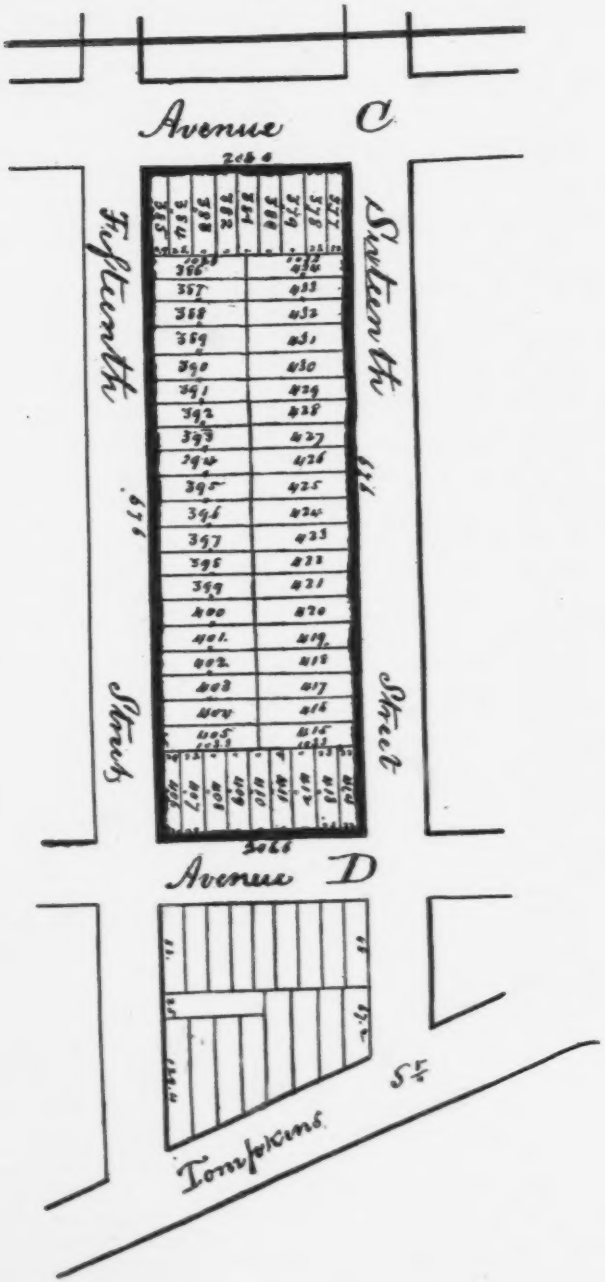
8744 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and fifty-five, before me personally came Robert W. Lowber and Elizabeth G., his wife, to me known to be the individuals described in, and who executed the within conveyance, who acknowledged that they executed the same, and the said Elizabeth G., on a private examination by me separate and apart from her husband, acknowledged that she executed the same freely without any fear or compulsion of her said husband.

JAMES P. HYATT.
Comm. of Deeds.

(Here follows facsimile marked p. 8745.)

8745


Avenue C
Fifteenth Street
Sixteenth Street
Avenue D
Tompkins
5th

8746 Recorded in the office of the Register of the City and County of New York, in Liber 693 of Cons, page 637, February 5, 1856, at 40 min. past 2 P. M.

Examined by JOHN J. DOANE, *Regr.*

8747 COMPLAINANT'S EXHIBIT 299.

MOSES TAYLOR AND CATHARINE A., HIS WIFE,

TO

THE MANHATTAN GAS LIGHT COMPANY. DEED.

Dated 15 June, 1853.

B. W. Bonney, Counsellor, &c., 38 Wall Street, N. Y. City.

THIS INDENTURE, made the fifteenth day of June, in the year one thousand eight hundred and fifty-three, BETWEEN MOSES TAYLOR, of the City of New York, in the County and State of New York, Merchant, and CATHARINE A., his wife, parties of the first part, and "THE MANHATTAN GAS LIGHT COMPANY" in the City of New York, parties of the second part, WITNESSETH, That the said parties of the first parties, for and in consideration of the sum of Forty-two thousand five hundred dollars, lawful money of the United States of America, to them in hand paid, by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, Have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents Do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said parties of the second part, and to their successors and assigns for ever, ALL that certain piece or parcel

8748 of land, water lot or land covered with water, Situate, lying and being in the Eighteenth Ward of the City of New York, and described and bounded as follows: BEGINNING at a point on the Northerly line of Fourteenth Street, distant two hundred and twenty-eight feet and three inches; Eastwardly from the North Easterly corner of Fourteenth Street and Avenue D, and running thence Eastwardly along the Northerly line of Fourteenth Street two hundred and two feet and eight inches to the Easterly side of the Bulkhead on the East River, as now laid out and built. Thence Northerly along the Easterly side of said Bulkhead two hundred and twenty-six feet and one inch to the Southerly line of Fifteenth Street. Thence Westwardly along said Southerly line of Fifteenth Street two hundred and seven feet and one inch to land now of the parties of the second part. Thence Southwardly along said last mentioned land two hundred and twenty-eight feet to the Northerly line of Fourteenth Street at the point or place of beginning.

AND ALSO all the Bulkhead, being about fifty-four feet and six inches, now laid out and built along said East River between the centre line of and the Northerly line of Fourteenth Street; AND ALSO the said Bulkhead, being about thirty-two feet and ten inches, now laid out and built along said East River between the centre line of and the Southerly line of Fifteenth Street. AND ALSO ALL the right, title, interest, property and claim of the said parties of the first part in and to the one-half of Fourteenth Street and the one-half of Fifteenth Street to the centre lines of said streets, respectively, in front of and

adjoining said premises above described, and extending to said bulkhead and in and to the one-half of Fifteenth Street to the
8749 centre line thereof, adjoining or in front of the premises lying Easterly of Avenue D, which were conveyed by Eliphatet Nott and Urania E., his wife, to said Moses Taylor by deed dated the twenty-second day of January one thousand eight hundred and fifty-two. Recorded on 14 February, 1852, and afterwards conveyed by the parties hereto of the first part to said parties hereto of the second part.

And also All the water front, water rights, water privileges, wharfage and cranage, rights of wharfage and cranage, lands covered with water and pre-emptive or other right to land which may hereafter be gained out of the East River by reason of any grant or extension of the present exterior line of the City of New York into the East River or otherwise between said centre lines of Fourteenth Street and Fifteenth Street, as continued into the East River in front of or adjoining said Bulkhead on premises, as laid down on the diagram hereto annexed:

Being the same lot of land and premises conveyed by Eliphatet Nott and Urania E., his wife, to the said Moses Taylor by deed dated the second day of June, 1853;

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; And also, all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the
8750 first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances; To Have and To Hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their successors and assigns, for ever.

In Witness Whereof, The said parties of the first part to these presents have hereunto affixed their hands and seals the day and year first above written.

MOSES TAYLOR, [L. S.]
CATHARINE A. TAYLOR. [L. S.]

Signed, sealed and delivered in the presence of
THO. T. SOMMERS.

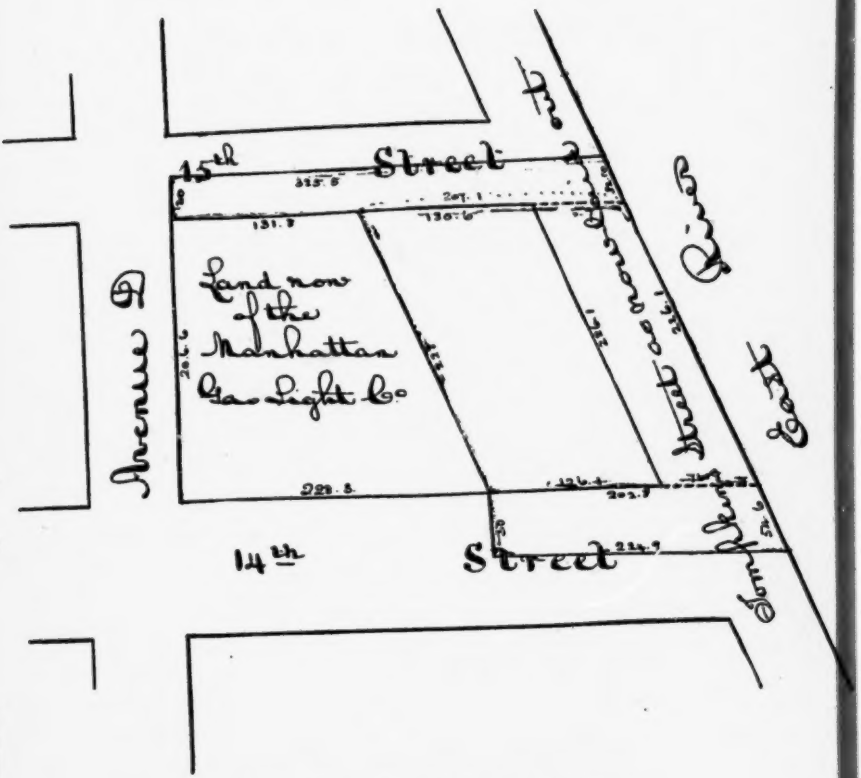
City and County of New York, *ss:*

On this 25th day of June, A. D. 1853, before me came Moses Taylor and Catharine A. Taylor, his wife, both to me personally known to be the same individuals described in and who had executed the foregoing conveyance and severally acknowledged to me that they had respectively executed the same, and the said Catharine A. upon a private examination, separate and apart from her said husband, acknowledged to me that she had executed the same freely and without any fear or compulsion of her said husband.

THO. T. SOMMERS,
Com. of Deeds.

(Here follows facsimile marked p. 8751.)

1759 8751



Recorded in the Office of Register of the City and County of New York, in Liber 633 of Conveyances, page 585, August 3d, 1853, at 50 minutes past 12 o'clock, noon.

Examined by

G. DYCKMAN,
Register.

8752 COMPLAINANT'S EXHIBIT 300.

MOSES TAYLOR AND CATHARINE A., HIS WIFE,

TO

THE MANHATTAN GAS LIGHT COMPANY.

DEED

Of Block bounded by 14th Street, 15th Street, Avenue D and Tompkins Street.

Dated 19th Feby., 1852.

B. W. Bonney, Counsellor, &c., 38 Wall Street, N. Y. City.

THIS INDENTURE, made the Nineteenth day of February, in the year one thousand eight hundred and fifty-two, BETWEEN MOSES TAYLOR, of the City of New York, in the County and State of New York, Merchant, and Catharine A., his wife, parties of the first part, and "THE MANHATTAN GAS LIGHT COMPANY" of the said City of New York, parties of the second part, WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Twenty-four thousand two hundred and ninety dollars, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, HAVE granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents Do grant, bargain, sell, alien,
8753 remise, release, convey and confirm, unto the said party of the second part, and to its successors and assigns for ever, ALL those certain sixteen (16) lots, pieces or parcels of ground, Situate, lying and being in the Eighteenth Ward of the City of New York, designated on the diagram hereunto annexed by the numbers six hundred and fifty-one (651) to six hundred and sixty-six (666), both inclusive, and which taken together are bounded and described as follows: BEGINNING at the intersection of the Northerly line of Fourteenth Street with the Easterly line of Avenue D, thence South Easterly along the said Northerly line of Fourteenth Street two hundred and twenty-eight (228) feet three (3) inches; thence Northerly along the Westerly line of a street to be known as Tompkins Street two hundred and twenty-eight (228) feet to the Southerly line of Fifteenth Street; thence North Westerly along said Southerly line of Fifteenth Street one hundred and thirty-one (131) feet eight (8) inches to said Easterly line of Avenue D, and thence South Westerly along said Easterly line of Avenue D, two hundred and six (206) feet six *inches* (6) inches to the place of beginning be the same more or less.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertain-

ing, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances; TO HAVE AND TO HOLD, all and singular the above mentioned and described
8754 premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, for ever.

IN WITNESS WHEREOF, The said parties hereto of the first part have hereunto affixed their hands and seals the day and year first above written.

MOSES TAYLOR. [L. S.]
CATHARINE A. TAYLOR. [L. S.]

Signed, sealed and delivered in the presence of
ALDEN J. HALE.

STATE OF NEW YORK, *City and County of New York:*

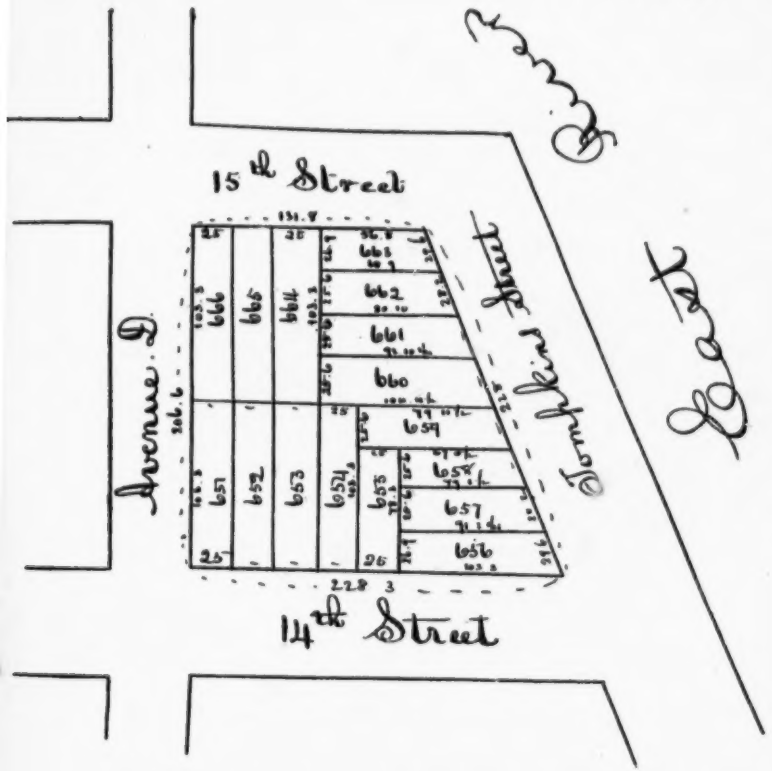
On this tenth day of March, A. D. 1852, before me came Moses Taylor, and on the ninth day of March, A. D. 1852, before me came Catharine A. Taylor, his wife, both known to me to be the individuals described in and who executed the foregoing conveyance, and they severally acknowledged to me that they executed the same, and the said Catharine A., on a private examination by me separate and apart from her husband, acknowledged to me that she executed the said conveyance freely and without any fear or compulsion of her said husband.

ALDEN J. HALE.
Commissioner of Deeds,
No. 38 *Wall Street.*

POOR C

1763

8019 **8755**



Recorded in the Office of Register of the City and County of New York, in Lib. 599 of Cons., page 158, March 16, 1852, at 20 mins. past 1 P. M.

Examined by

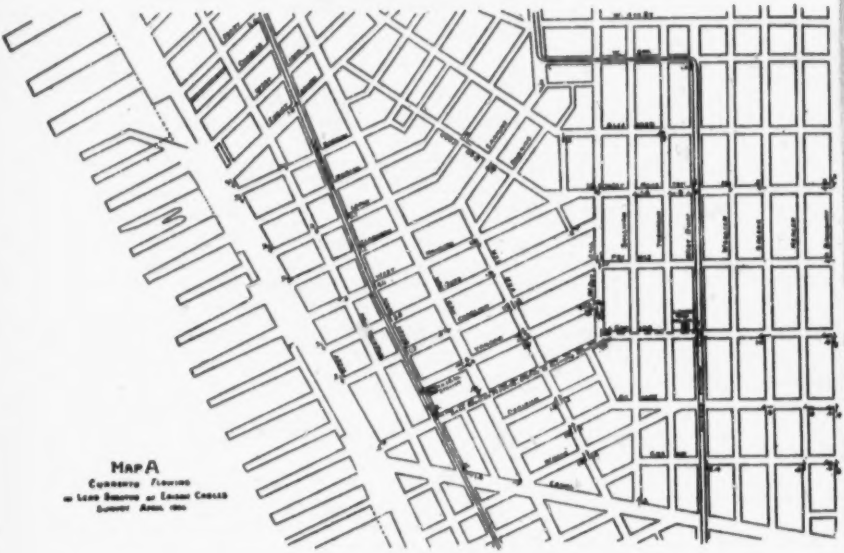
GARRET DYCKMAN,
Register.

The following diagrams & pictures marked pp. 6756 to 6770 incl.

8020

8756

COMPLAINANT'S EXHIBIT 303



MAP A

COMPLAINANT'S EXHIBIT 305

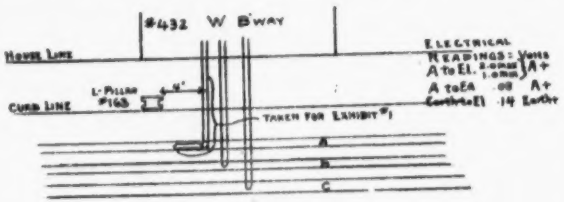


Fig I

COMPLAINANT'S EXHIBIT 307

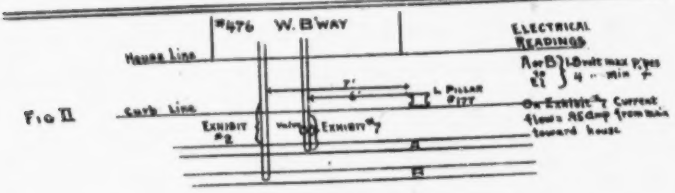


Fig II

COMPLAINANT'S EXHIBIT 309

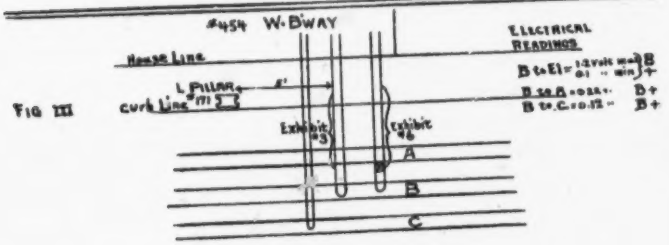


Fig III

COMPLAINANT'S EXHIBIT 311

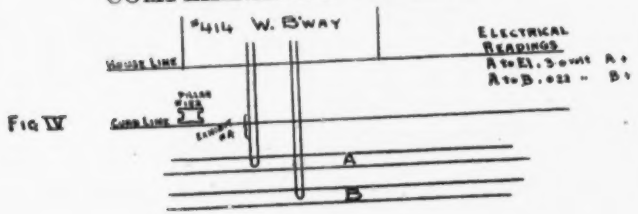


Fig IV

COMPLAINANT'S EXHIBIT 313

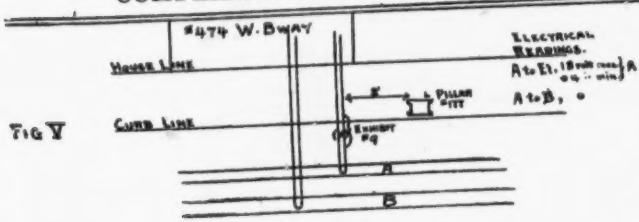


Fig V

8022

COMPLAINANT'S EXHIBIT 315

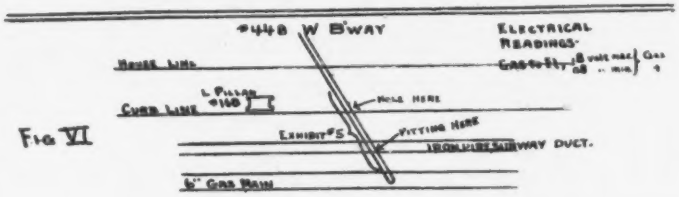


FIG VI

COMPLAINANT'S EXHIBIT 318

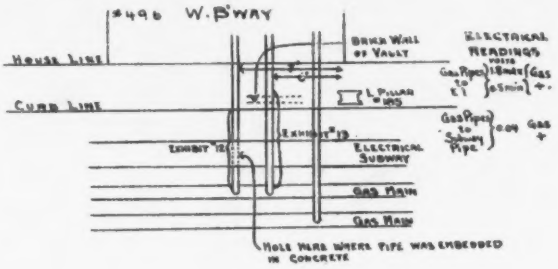


FIG VII

COMPLAINANT'S EXHIBIT 321

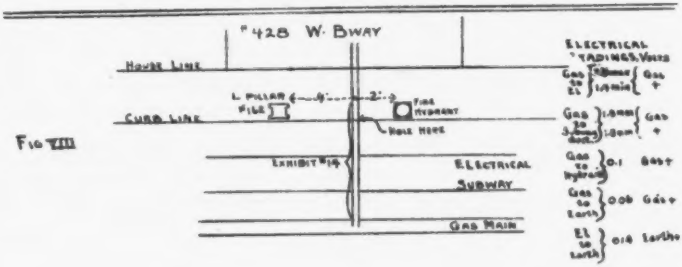


FIG VIII

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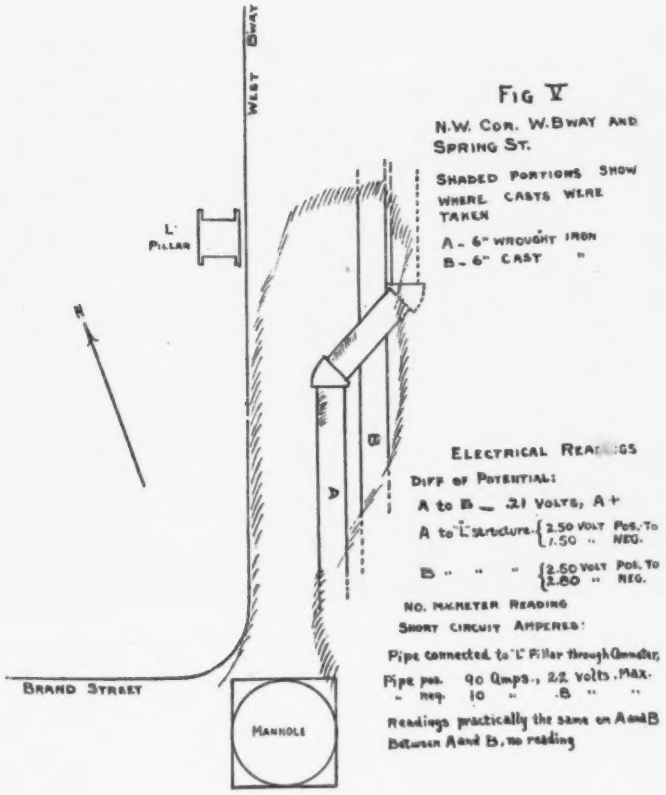
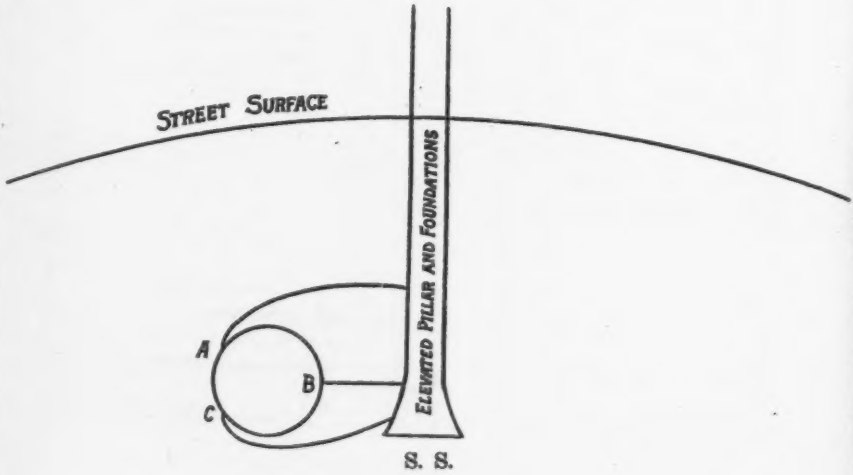
COMPLAINANT'S EXHIBIT 322.

May 8th, 1906.



COMPLAINANT'S EXHIBIT 325.



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COMPLAINANT'S EXHIBIT 326.

Manhattan St., East of Amsterdam Ave.

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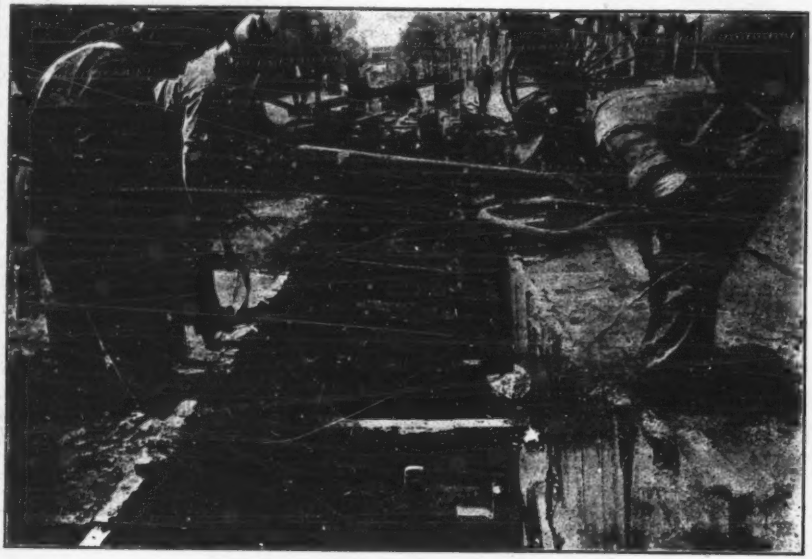
COMPLAINANT'S EXHIBIT 327.



One Hundred and Twelfth St., W. of Second Ave.

POOR

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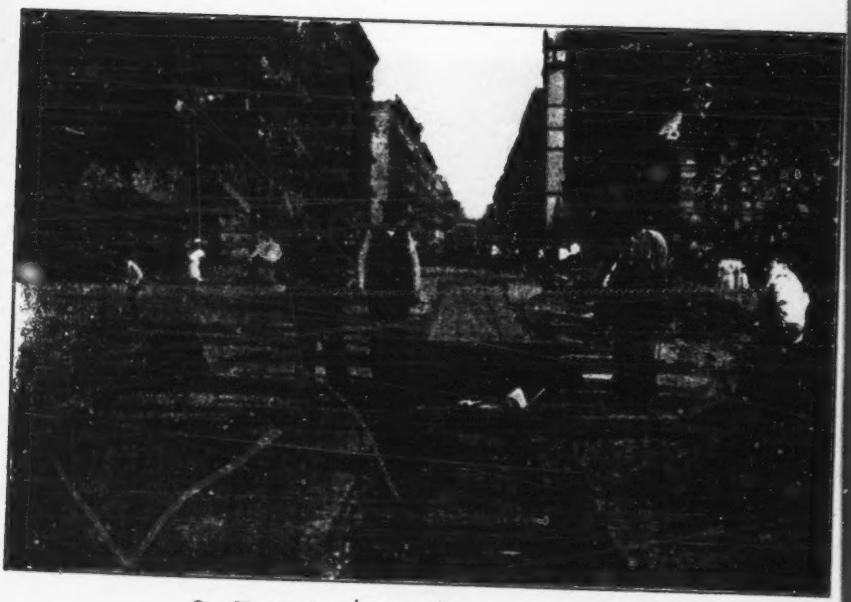
COMPLAINANT'S EXHIBIT 328.



One Hundred and Twelfth St., Across Lenox Ave.

PY

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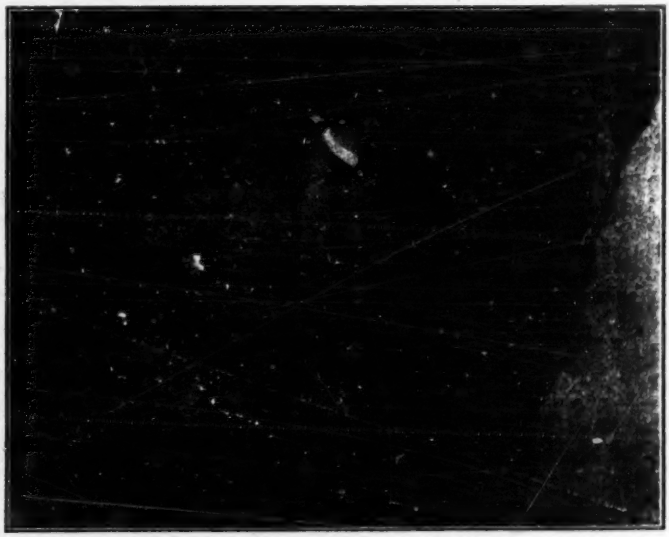
COMPLAINANT'S EXHIBIT 329.



Intersection of One Hundred and Sixteenth St.,
St. Nicholas and Seventh Aves.

POOR CO

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COMPLAINANT'S EXHIBIT 330.

St. Nicholas Ave., at One Hundred and Sixteenth St. and Seventh Ave., Looking North.

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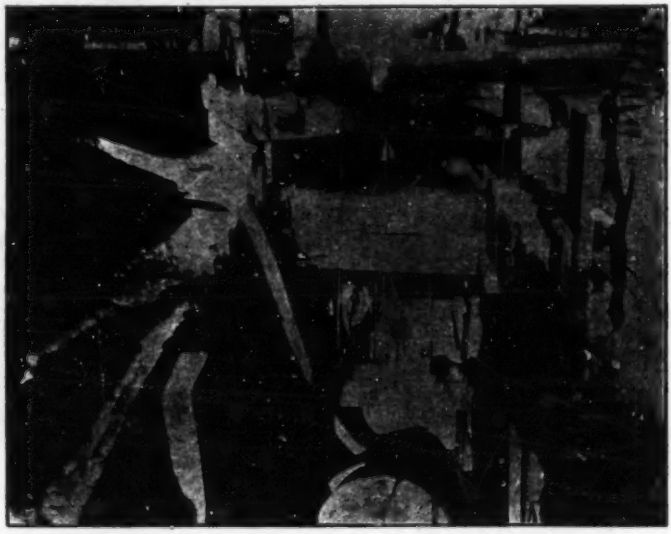
COMPLAINANT'S EXHIBIT 331.



One Hundred and Eleventh St., East of First Ave.

POOR C

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COMPLAINANT'S EXHIBIT 332.

Cor. Manhat. St. and Broadway.

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COMPLAINANT'S EXHIBIT 333.

Broadway, S. of One Hundred and Thirty-first St., E. S.

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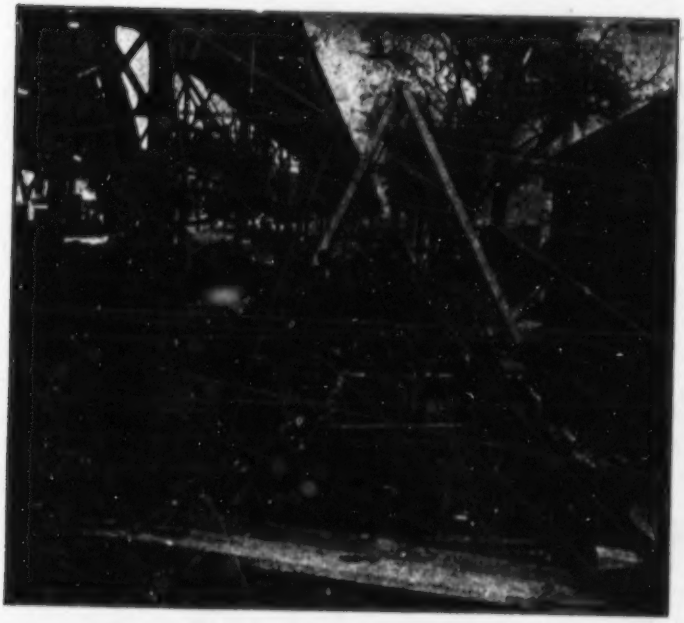
COMPLAINANT'S EXHIBIT 334.



Broadway, N. of Manhattan St., E. S.

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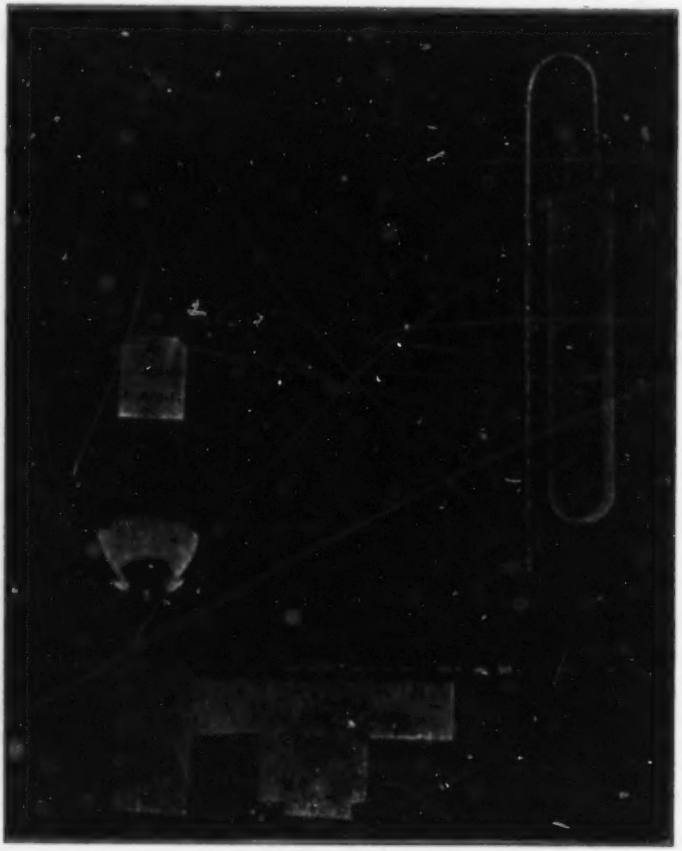
COMPLAINANT'S EXHIBIT 341.

January 24, 1907



COMPLAINANT'S EXHIBIT 336

Photometer Tests With Burners Used by Prof. Hallock

STATE'S EXHIBIT X

Commercial 6 ft. Bat-wing Lava Tip Burner

Date.	Pressure at Tip.	Rate of Consumption per Hour.	Candle Power of Flame.	Efficiency Candle Power per Foot.	Remarks.
	Inches.	c. f.			
*12/29/06	0.4	4.26	17.18	4.03	Flame of good shape and stiffness.
	0.5	5.02	20.21	4.02	Flame of good shape and stiffness.
	0.6	5.66	22.68	4.00	Flame shows horns at the base and streaks in the blue portion and is just on the point of becoming serrated on the upper edge.
	0.7	6.25	24.18	3.87	Quite prominent horns at base of flame, blue portion streaked and upper edge serrated.
	0.8	6.87	26.93	3.92	
	0.9	7.52	29.05	3.86	Horns at base of flame almost horizontal. Serrations in upper edge very pronounced.
	1.0	8.13	30.91	3.68	
1/3/07	0.4	4.4	18.90	4.29	Candle power of gas used 24.4.

*Candle power of gas before beginning of series 23.20
*Candle power of gas after end of series 23.98

Without correction for temperature and pressure.

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COMPLAINANT'S EXHIBIT 337

Photometer Tests With Burners Used by Prof. Hallock

STATE'S EXHIBIT Y

Commercial 4 ft. Bat-wing Lava Tip Burner Against Candles

Date.	Pressure at Tip.	Rate of Consumption per Hour.	Candle Power of Flame.	Efficiency Candle Power per Foot.	Remarks.
	Inches.	c. f.			
1/2/07	0.4	3.97	17.19	4.33	Candle power of gas used as determined before making tests 24.25 without correction for temperature and pressure.
	0.5	4.50	19.07	4.24	
* 1/3/07	0.2	2.37	10.19	4.30	Flame small and flabby, and affected by the slightest current of air.
	0.8	6.13	24.31	3.96	Flame shows horns at base and a somewhat serrated top.
	1.16	7.96	26.93	3.38	Horns at base of flame horizontal, slight roar.

*Candle power of gas used, 24.24 to 24.40.

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COMPLAINANT'S EXHIBIT 338

Photometer Tests With Burners Used by Prof. Hallock

STATE'S EXHIBIT Z

Commercial Fish Tail Burner No. 5—Check Removed

Date.	Pressure at Tip.	Rate of Consumption per Hour.	Candle Power of Flame.	Efficiency Candle Power per Foot.	Remarks.
	Inches.	c. f.			
12/31/06	0.14	3.1	13.9	4.48	Flame elongated, curled over on edges, flabby, and easily affected by currents of air. Not good for ordinary commercial use.
	0.21	4.2	18.44	4.39	Flame of fairly good shape but still lacks the stiffness necessary to fit it for the most satisfactory use commercially.
	0.62	7.4	.....	....	Burner blows and flame runs up to a point. No such flame would be used commercially so no determination of candle power was made.
	0.97	9.5	.....	....	Flame roaring so that it could be heard all over a large room.

Candle power of gas before beginning series 24.2
Candle power of gas after end of series 23.7

Without correction for temperature and pressure.

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COMPLAINANT'S EXHIBIT 339

Photometer Tests With Burners Used by Prof. Hallock

STATE'S EXHIBIT A.A.

Commercial Fish Tail Burner No. 5—Checked

Date.	Pressure Behind Check.	Rate of Consumption per Hour.	Candle Power of Flame.	Efficiency Candle Power per Foot.	Remarks.
	Inches.	c. f.			
1/3/07	0.58	3.46	15.80	4.56	Flame elongated, flabby and curled over on the edges. Very easily affected by draughts.
	0.83	4.10	19.19	4.68	Flame still long and slightly curled over on edges but stiffer than at pressure of 0.58 in.
	1.00	4.67	22.57	4.83	Flame in good condition.
	1.18	5.28	24.92	4.72	

Candle power of gas, without correction for temperature or pressure, 24.4.

8774 6038

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COMPLAINANT'S EXHIBIT 340

PHOTOMETER TESTS OF BURNERS

Series of Tests Comparing Unchecked and Checked Burners

Date.	Burner.	Pressure at Base of Burner Pillar.	Rate of Consumption per Hour.	Candle Power of Flame.	Efficiency Candle Power per Foot.
		Inches.	cu. ft.		
1/4/07	State's Exhibit Z. Unchecked Burner.	0.14	3.34	14.80	4.43
	State's Exhibit AA. Same as Z except that it is Checked.	1.00	4.78	21.34	4.46
	State's Exhibit X. Unchecked.	0.4	4.52	18.84	4.14
	High Pressure Bray. Slit Union No. 6. Similar to X except that it is Checked.	1.29	4.74	21.43	4.52
	State's Exhibit Y. Unchecked Burner.	0.4	3.82	15.95	4.17
	High Pressure Bray. Slit Union No. 4. Similar to Y except that it is Checked.	1.33	3.64	15.61	4.28

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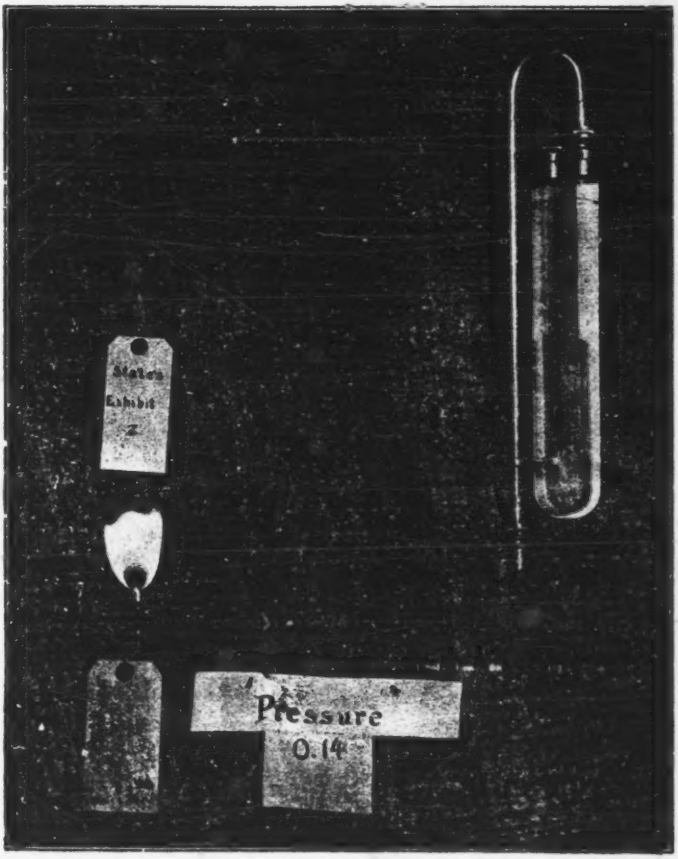
COMPLAINANT'S EXHIBIT 342.

January 24, 1907



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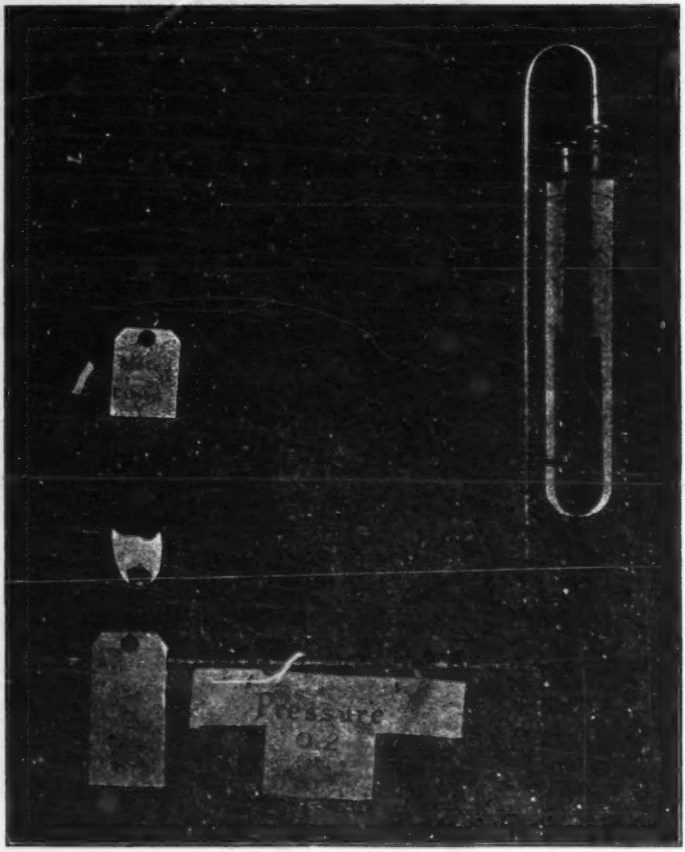
COMPLAINANT'S EXHIBIT 343.

January 24, 1907



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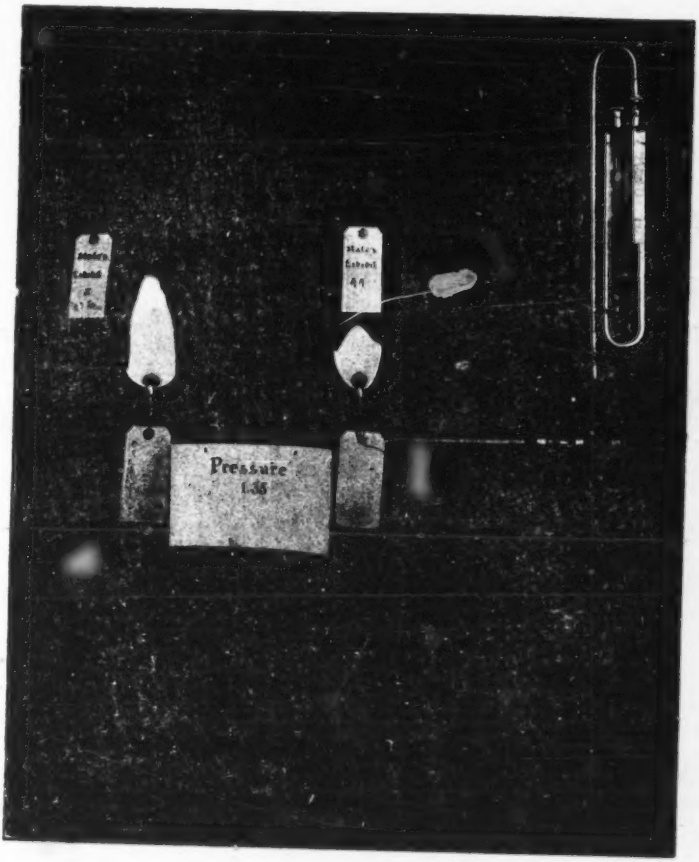
COMPLAINANT'S EXHIBIT 344

January 24, 1907



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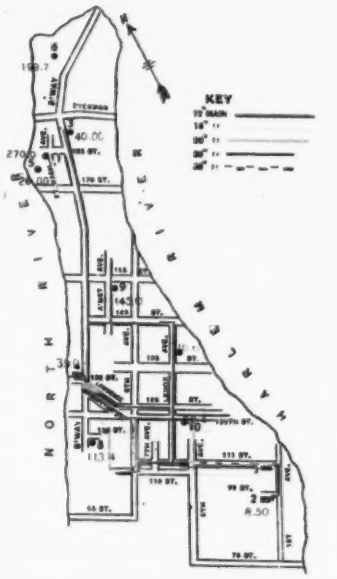
COMPLAINANT'S EXHIBIT 345



TERRITORY SUPPLIED BY 99TH 111TH AND 132ND ST. STATIONS

REFERENCE

1-111th St. Station		
2-99th "	"	
3-Inwood	"	
4-132nd St.	"	
5-176th " —Boulevard Laf.		Green.
6-Bolton Road		Red.
7-533 Lenox Ave.		Brown.
8-B'way-120th St.		Voilet.
9-1911 Amsterdam Ave.		Blue.
10-38 W. 125th St.		Yellow.
11-185th St.-Ft. Washington Ave.		Orange.

PRESSURE FOR JANUARY. 16. 1907.

NOTE:- RED FIGURES IN CENTRIC SKETCH SHOW ELEVATION ABOVE MEAN HIGH WATER.

POOR COPY

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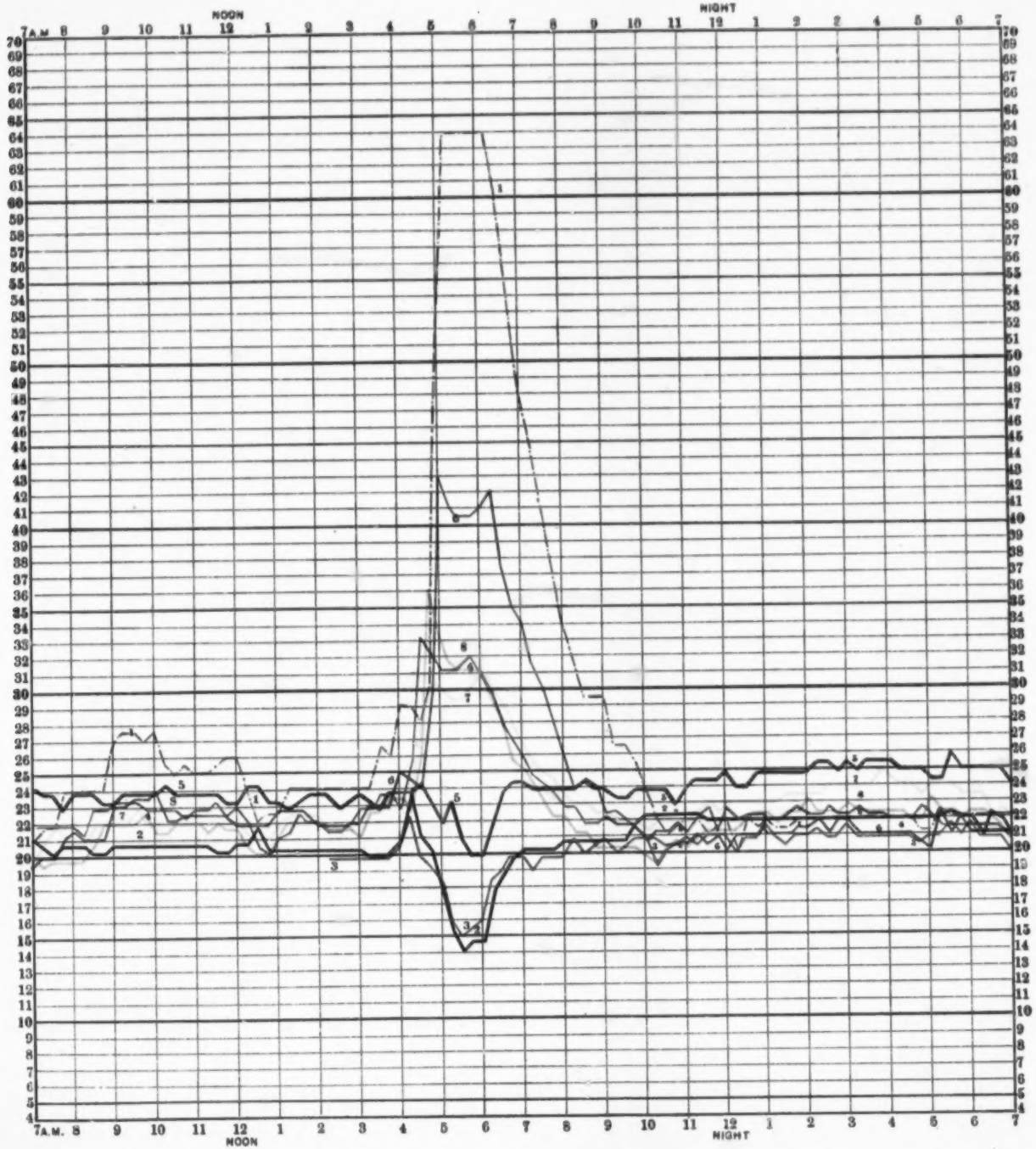
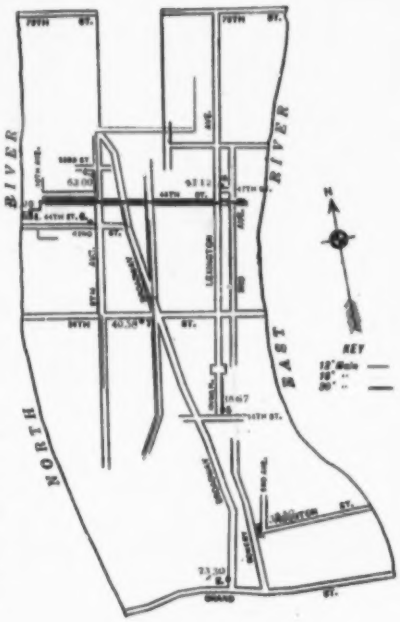


COMPLAINANT'S EXHIBIT 346



TERRITORY SUPPLIED BY THE 44th ST. STATION.

REFERENCE:

Works Pressure Sta. 1 Pressure shown on				
District Pressure Charts	"	"	"	
487 Broadway Sta.	2	"	"	Blue
5 Second Ave. "	3	"	"	Green
879 Eighth Ave. "	4	"	"	Orange
4 Irving Pl. "	5	"	"	Brown
317 W.42nd St. "	6	"	"	Red
108 W.34th St. "	7	"	"	Yellow
119 E.47th St. "	8	"	"	Violet

PRESSURE OF JANUARY 16th 1907.

NOTE:— Red Figures at Stations as shown in District Sketch Show Elevations above Mean High Water.

POOR COPY

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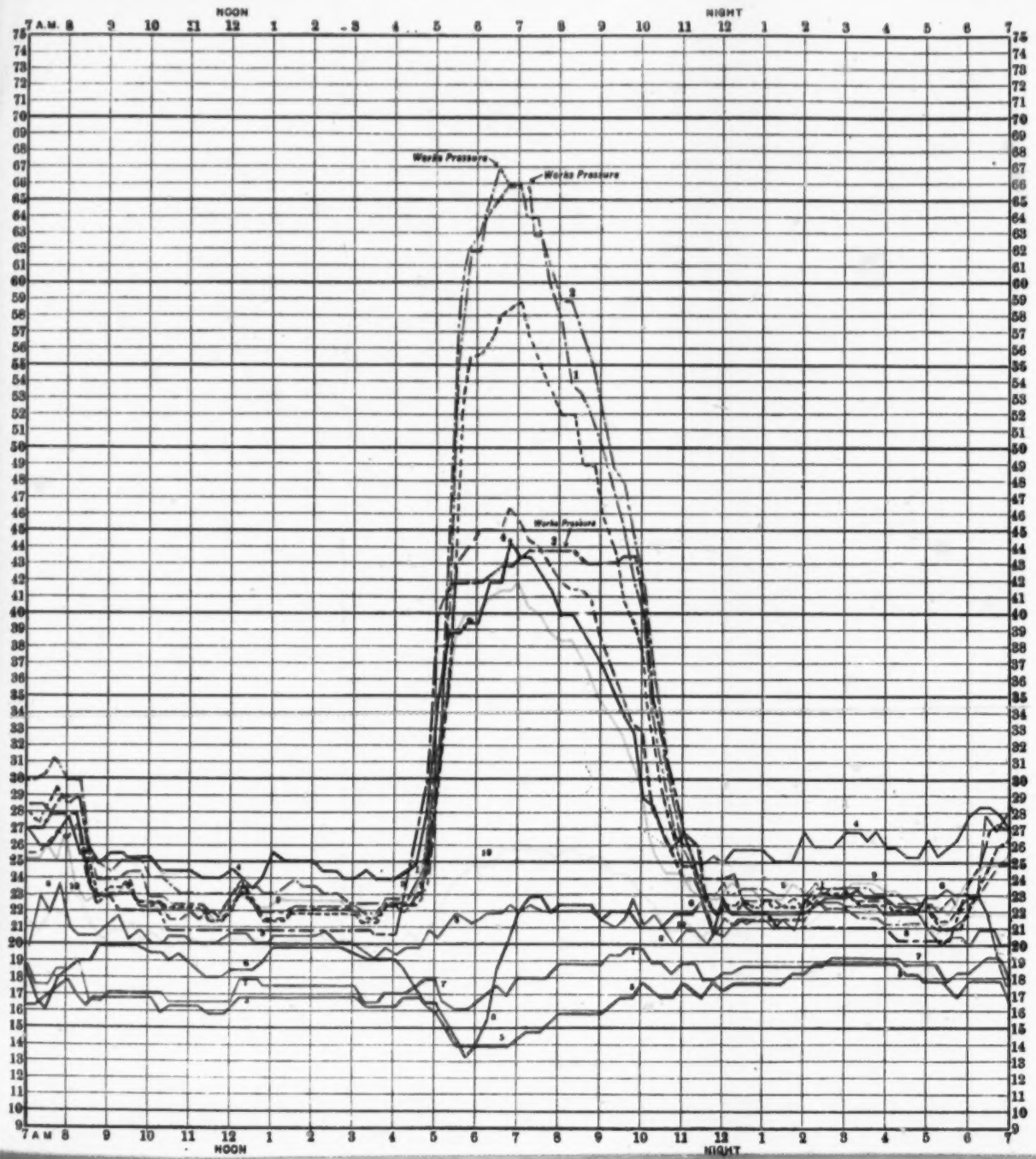
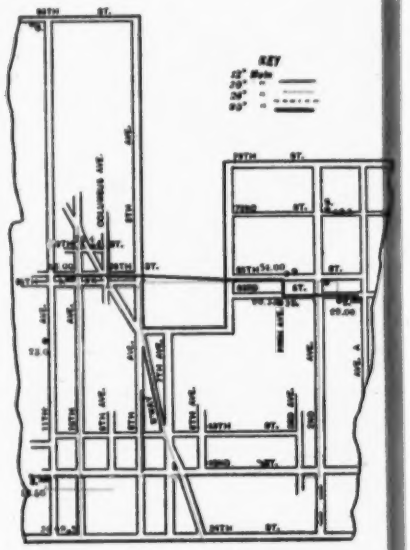


COMPLAINANT'S EXHIBIT 347



TERRITORY SUPPLIED BY THE 42ND / 63RD ST / 65TH STATIONS.

REFERENCE:

66th St.	Works Pressure Sta.	1.	Pressure shown in
63rd St.	" " "	2.	" " "
42nd St.	" " "	3.	" " "

DISTRICT PRESSURE CHARTS.

145 W. 69th St.	Sta.	4.	Pressure shown in Blue
844 11th Ave.	"	5.	" " " Green
227 Riverside Drive	"	6.	" " " Brown
555 W. 35th St.	"	7.	" " " Violet
311 E. 72nd St.	"	8.	" " " Red
145 E. 65th St.	"	9.	" " " Orange
565 Park Ave.	"	10.	" " " Yellow
408 E. 63rd St.	"	11.	" " " Blue Broken Line
308 E. 65th St.	"	12.	" " " Brown " "

PRESSURE FOR JAN. 16TH 1907.

NOTE.—Red Figures at Stations as shown in District Sketch Show Elevations above Mean High Water

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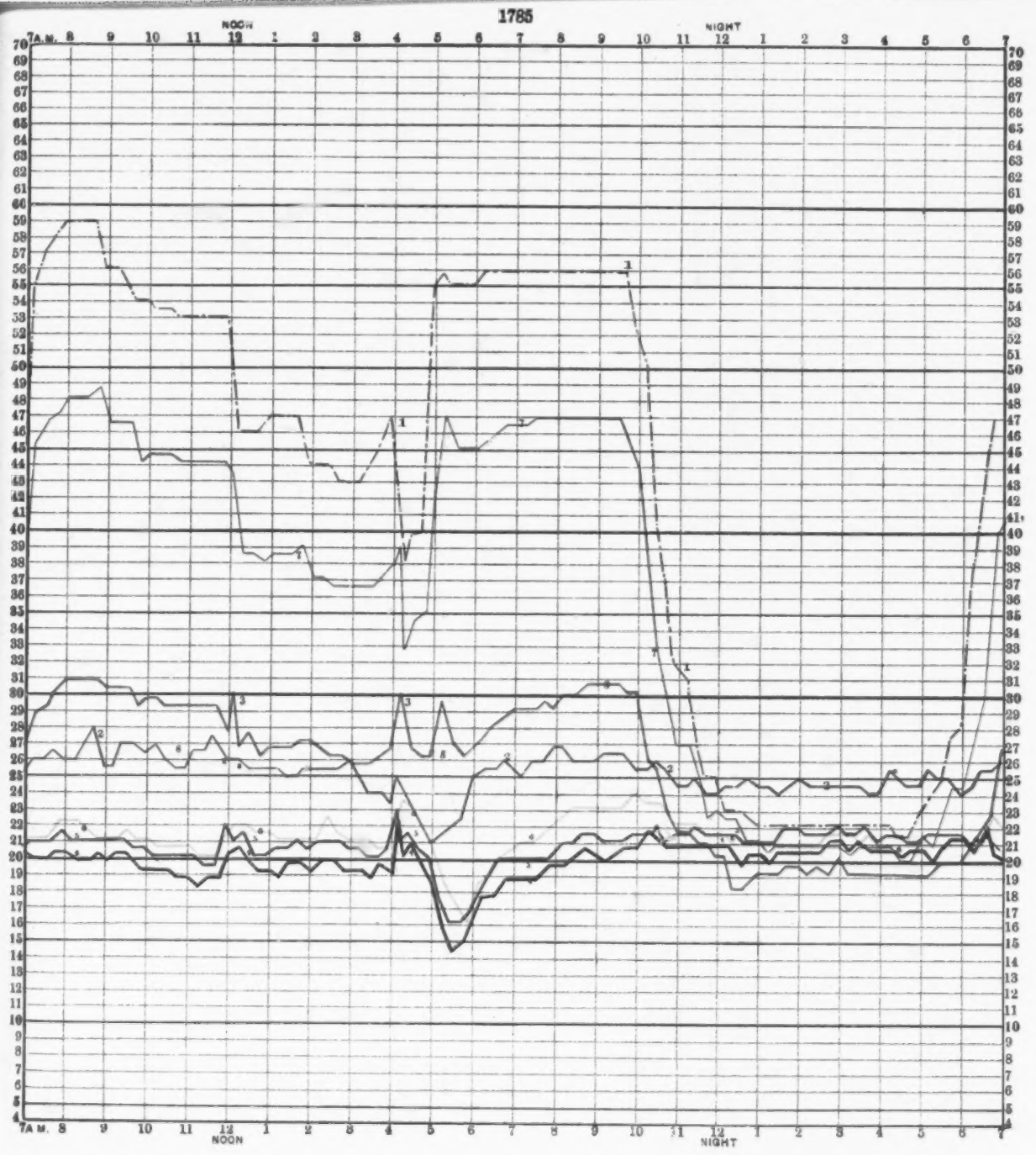
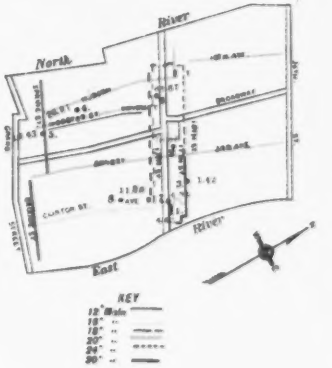


COMPLAINANT'S EXHIBIT 348

TERRITORY SUPPLIED BY THE 14th ST. STATION.
PRESSURE OF JAN. 17th 1907.



REFERENCE:

Works Pressure Sta. 1 Pressure shown in District Pressure Charts		
15th St. Irving Pl. Sta.	2	Red
420 E. 18th St.	3	Green
148 W. Houston St.	4	Blue
90 Wooster St.	5	Brown
78 Fifth Ave.	6	Orange
909 E. 14th St.	7	Violet
100 Ave. B.	8	Yellow

NOTE.— Red Figures at Stations as shown on District Sketch Show Elevations above Mean High Water.

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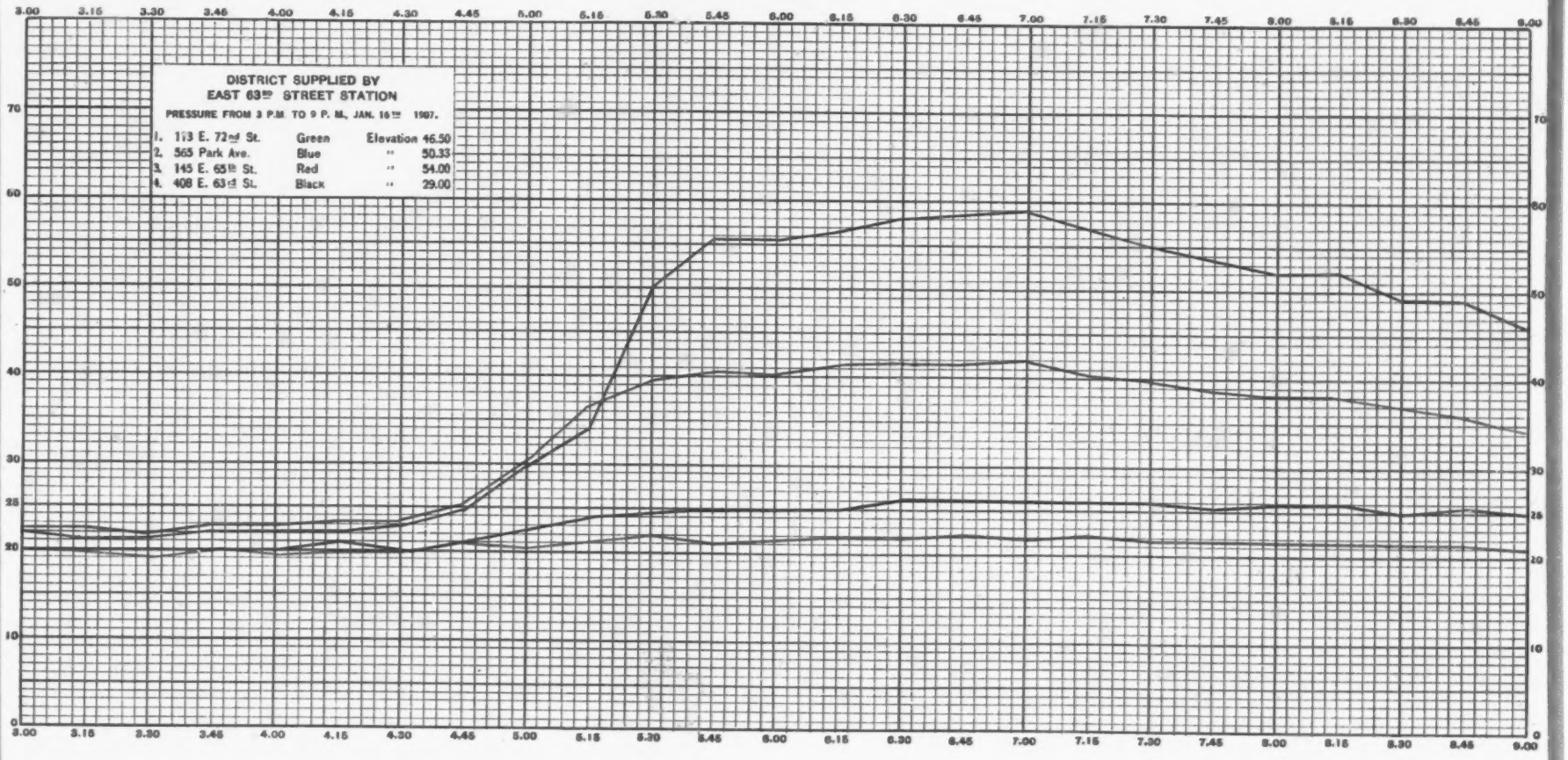
COMPLAINANT'S EXHIBIT 349



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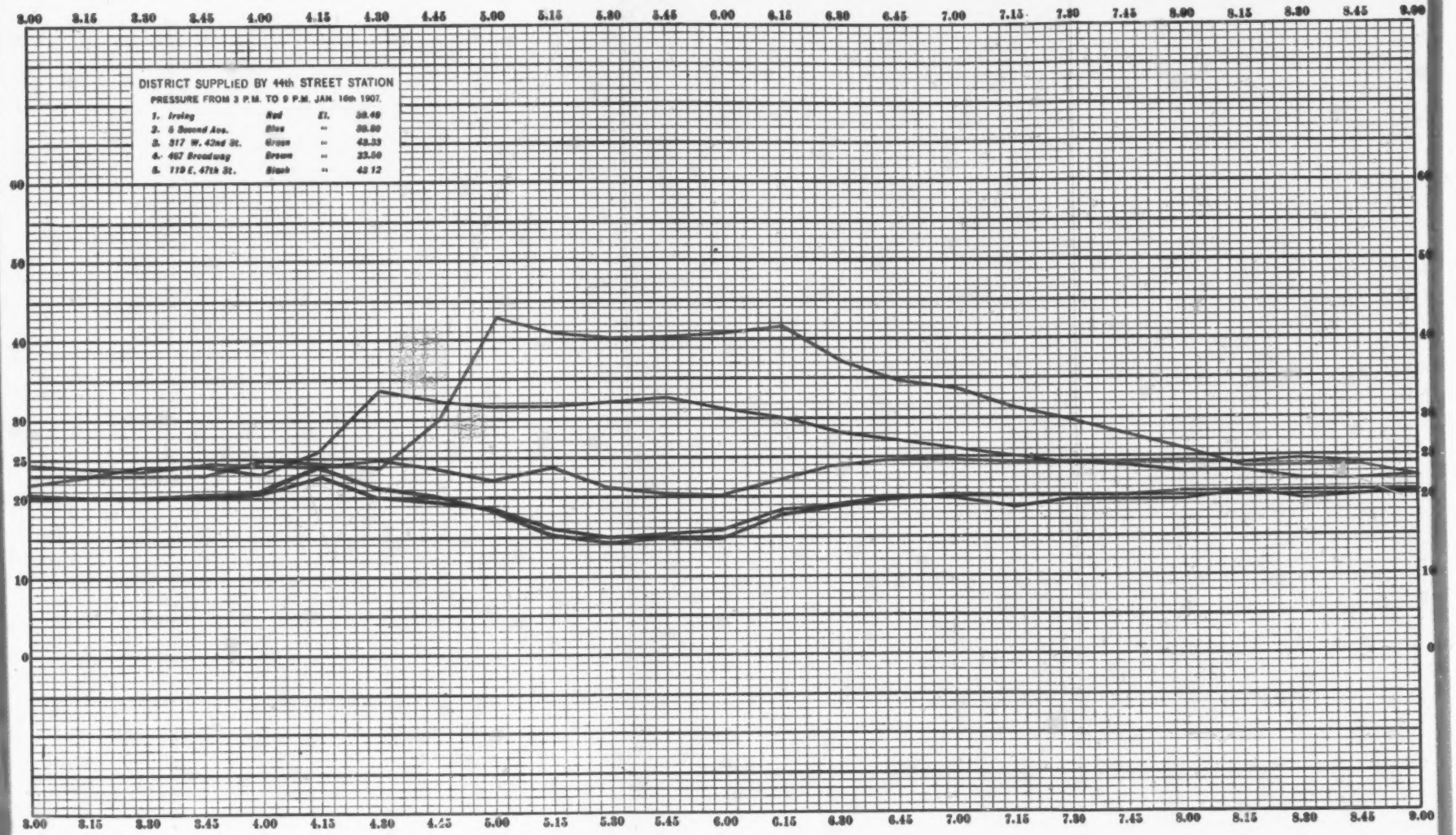
COMPLAINANT'S EXHIBIT 350



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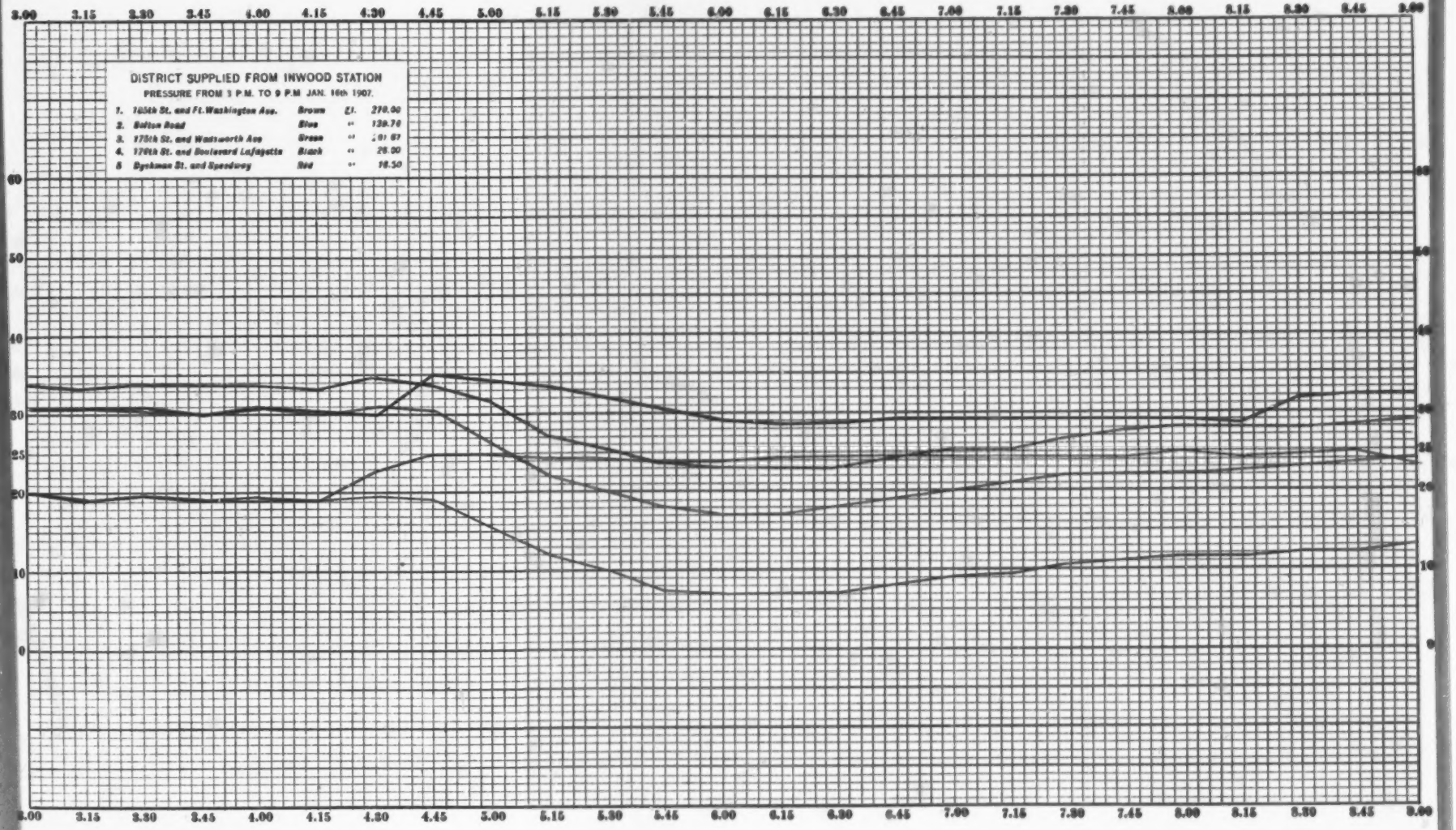
COMPLAINANT'S EXHIBIT 351



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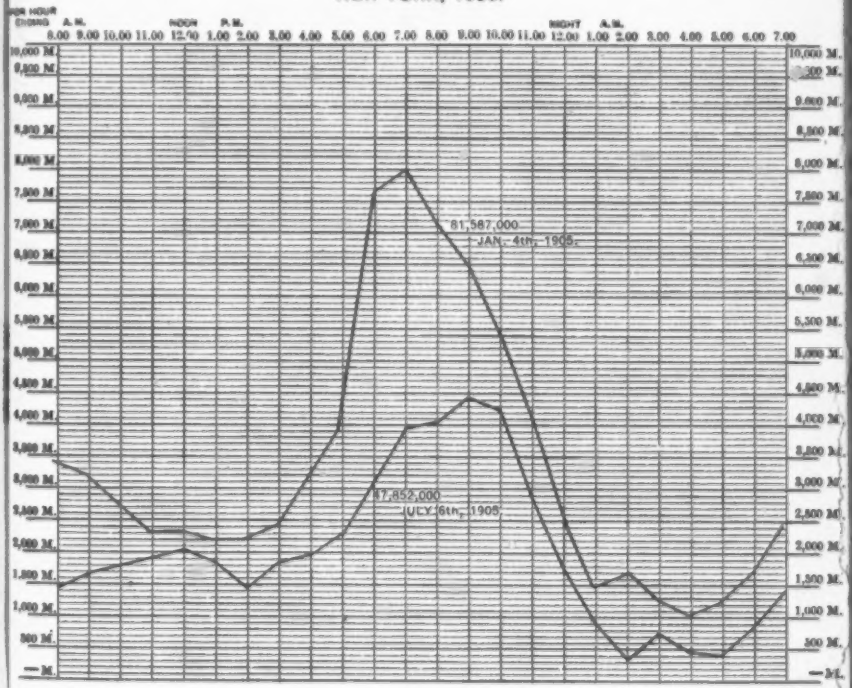
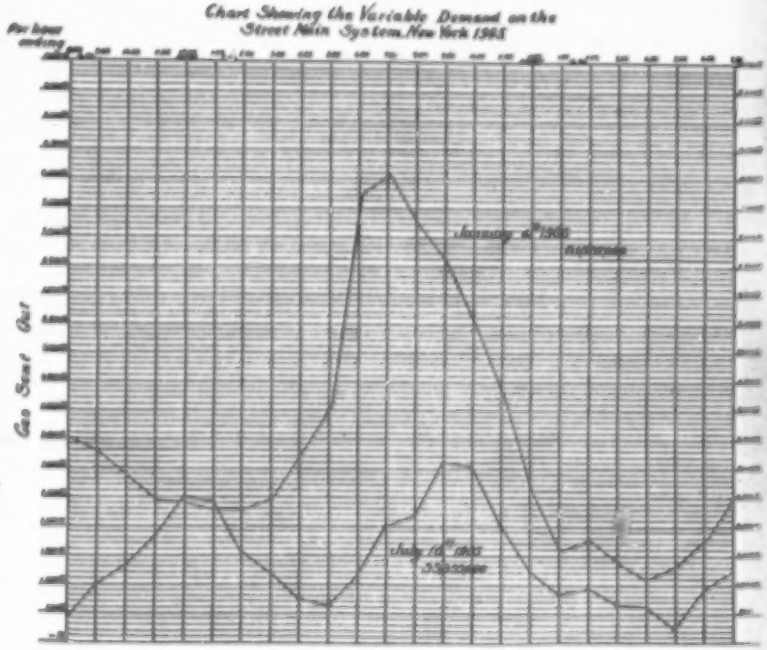
COMPLAINANT'S EXHIBIT 352

CHART SHOWING THE VARIABLE DEMAND ON THE STREET MAIN SYSTEM NEW YORK, 1905.



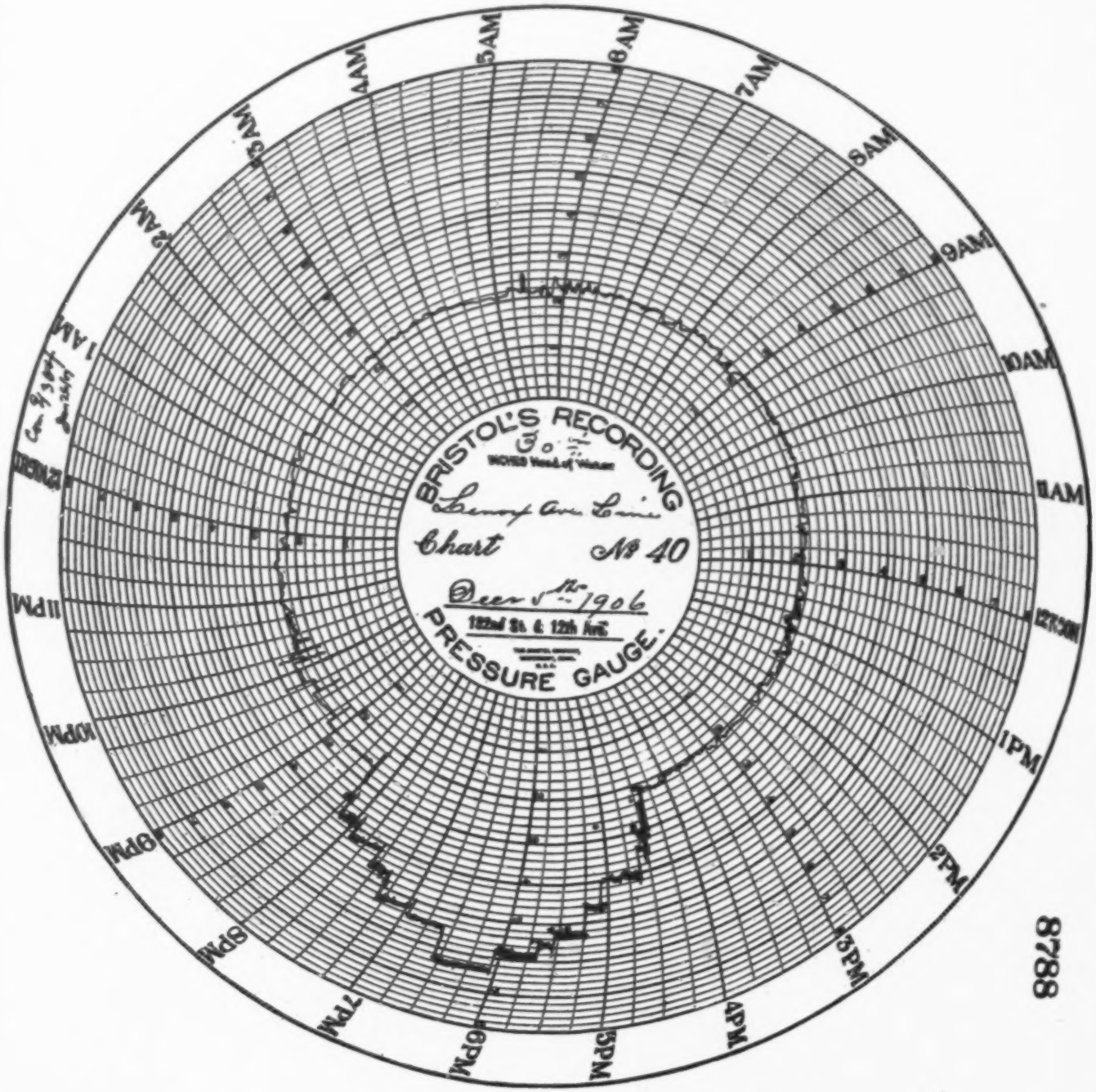
COMPLAINANT'S EXHIBIT 333

January 26, 1907



COMPLAINANT'S EXHIBIT 354

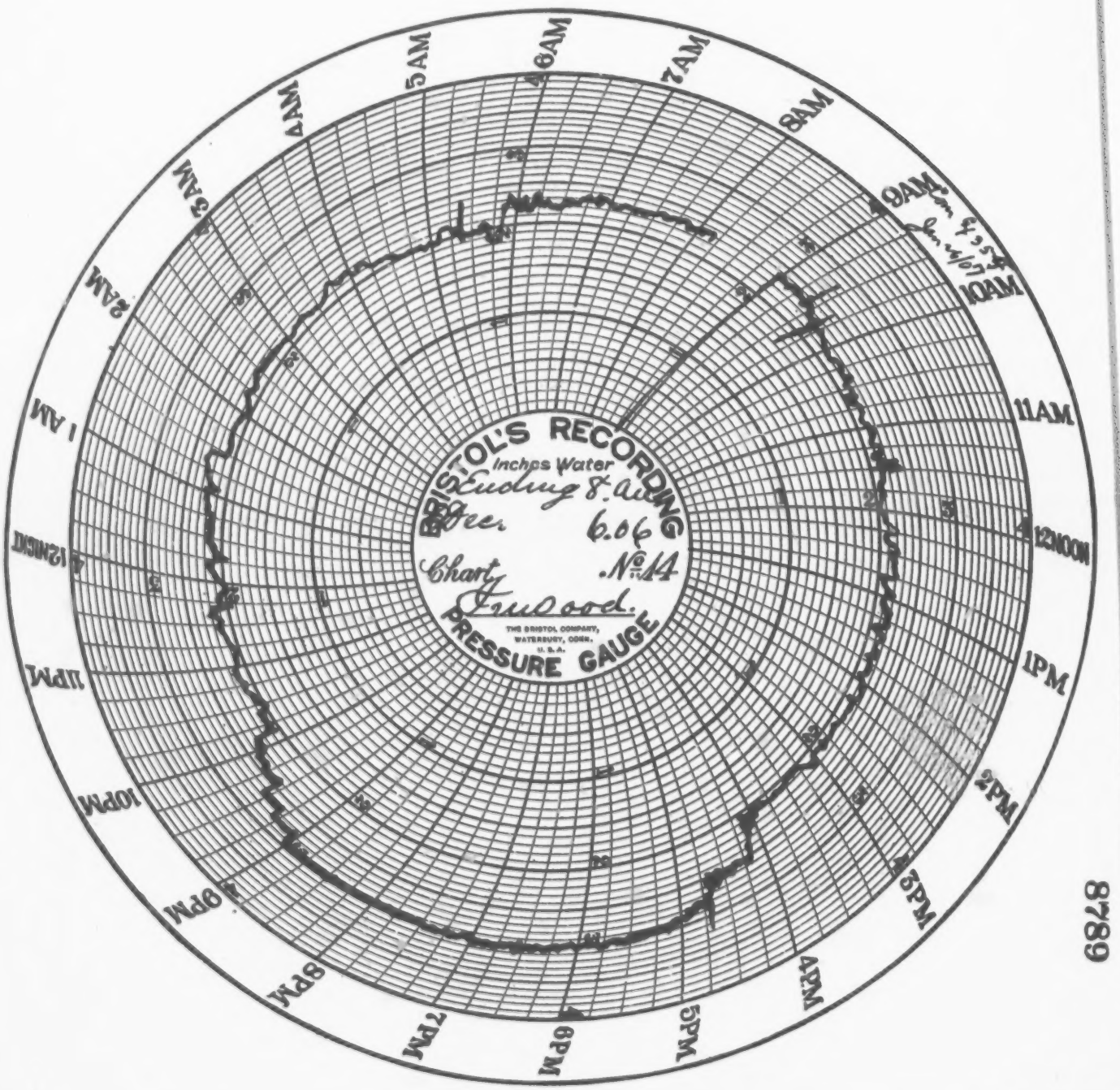
January 26, 1907



8788

COMPLAINANT'S EXHIBIT 355

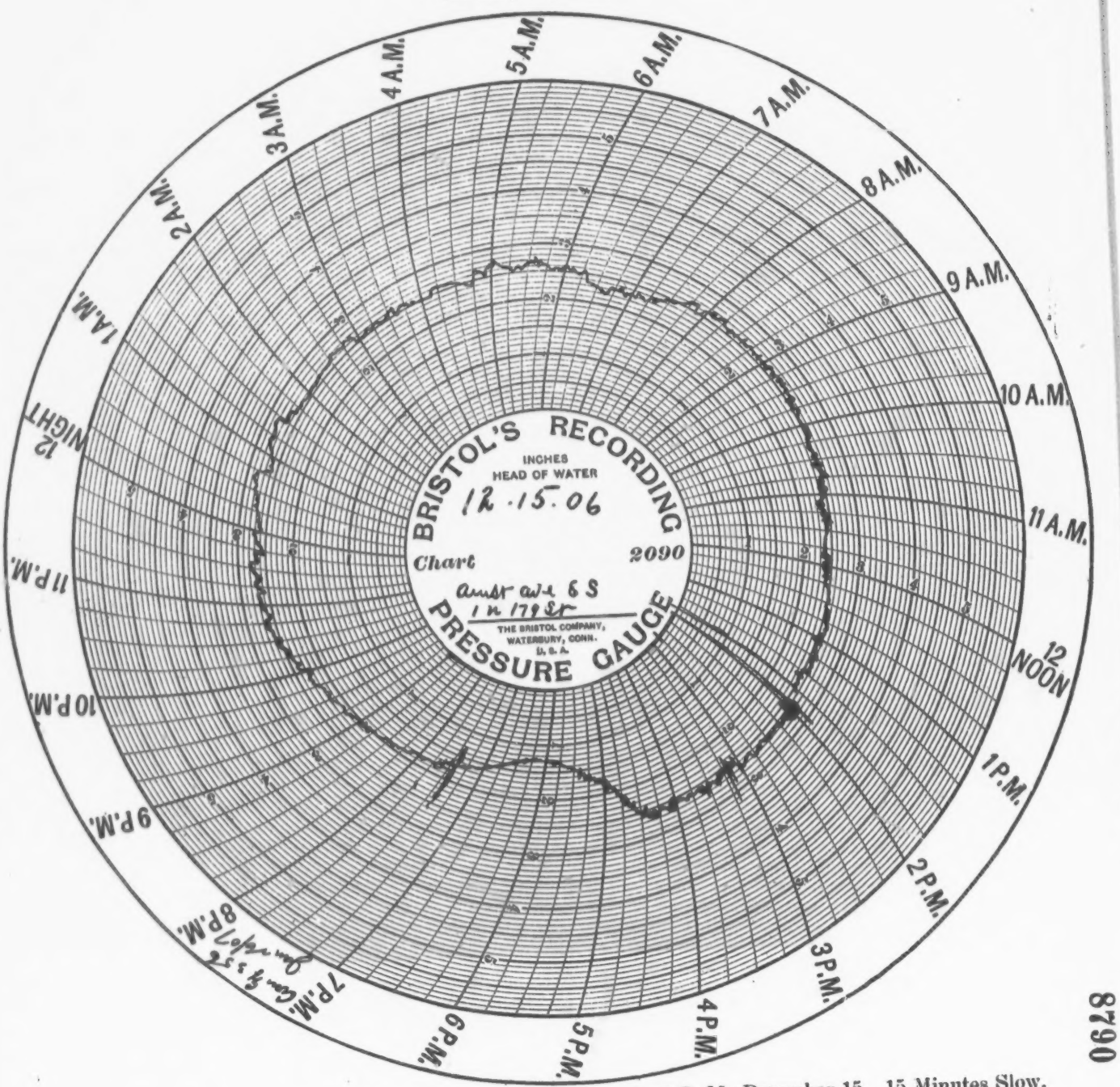
January 26, 1907



8789

COMPLAINANT'S EXHIBIT 356

January 26, 1907

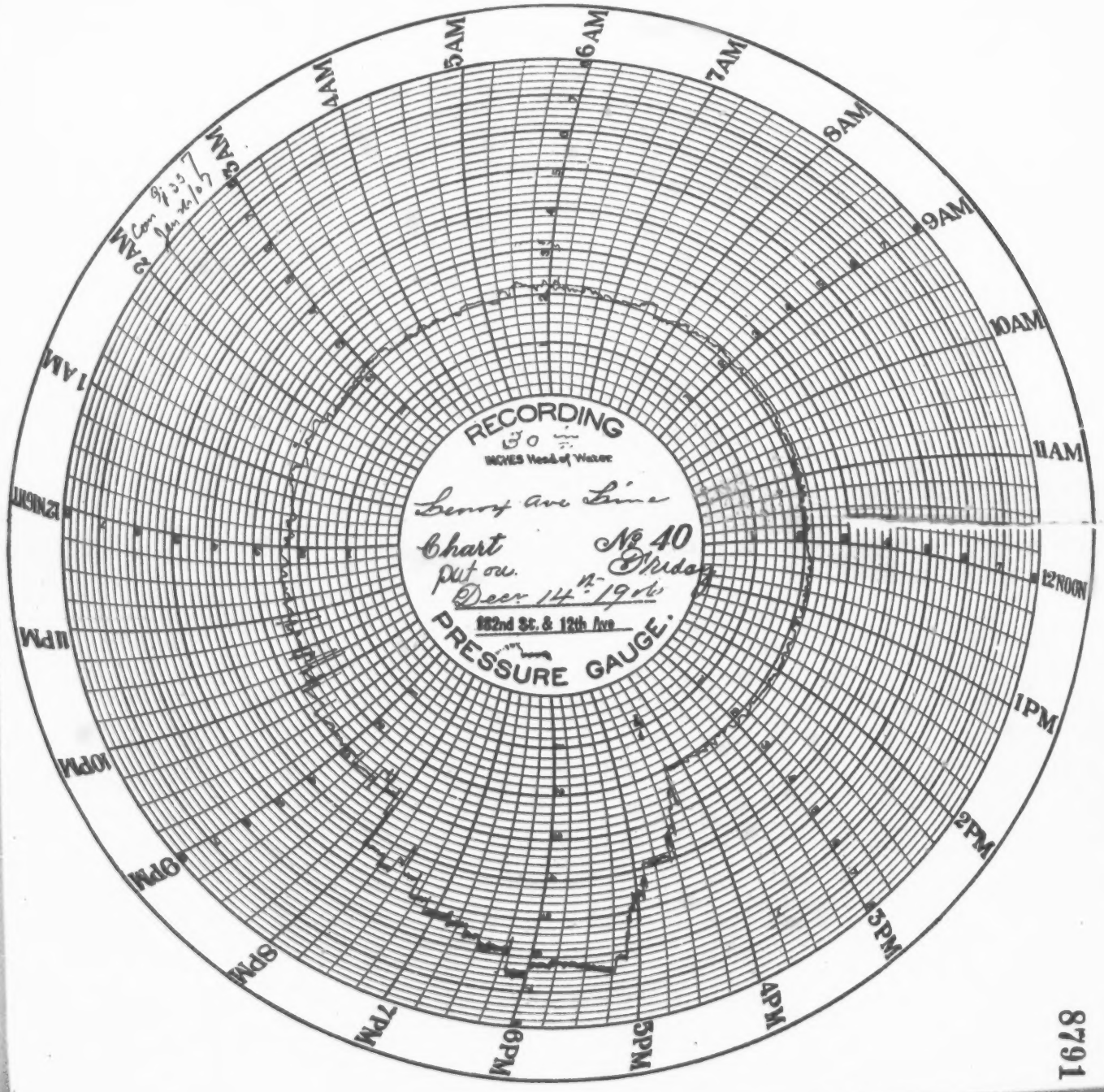


8790

Amsterdam Avenue, E. S., 1 N. 179th Street. Removed—2 P. M., December 15. 15 Minutes Slow. Street Elevation—157.49 ft. Pressure at Lamp—In Street. Recording Gauge Tested—Correct with Water Gauge.

COMPLAINANT'S EXHIBIT 357

January 26, 1907



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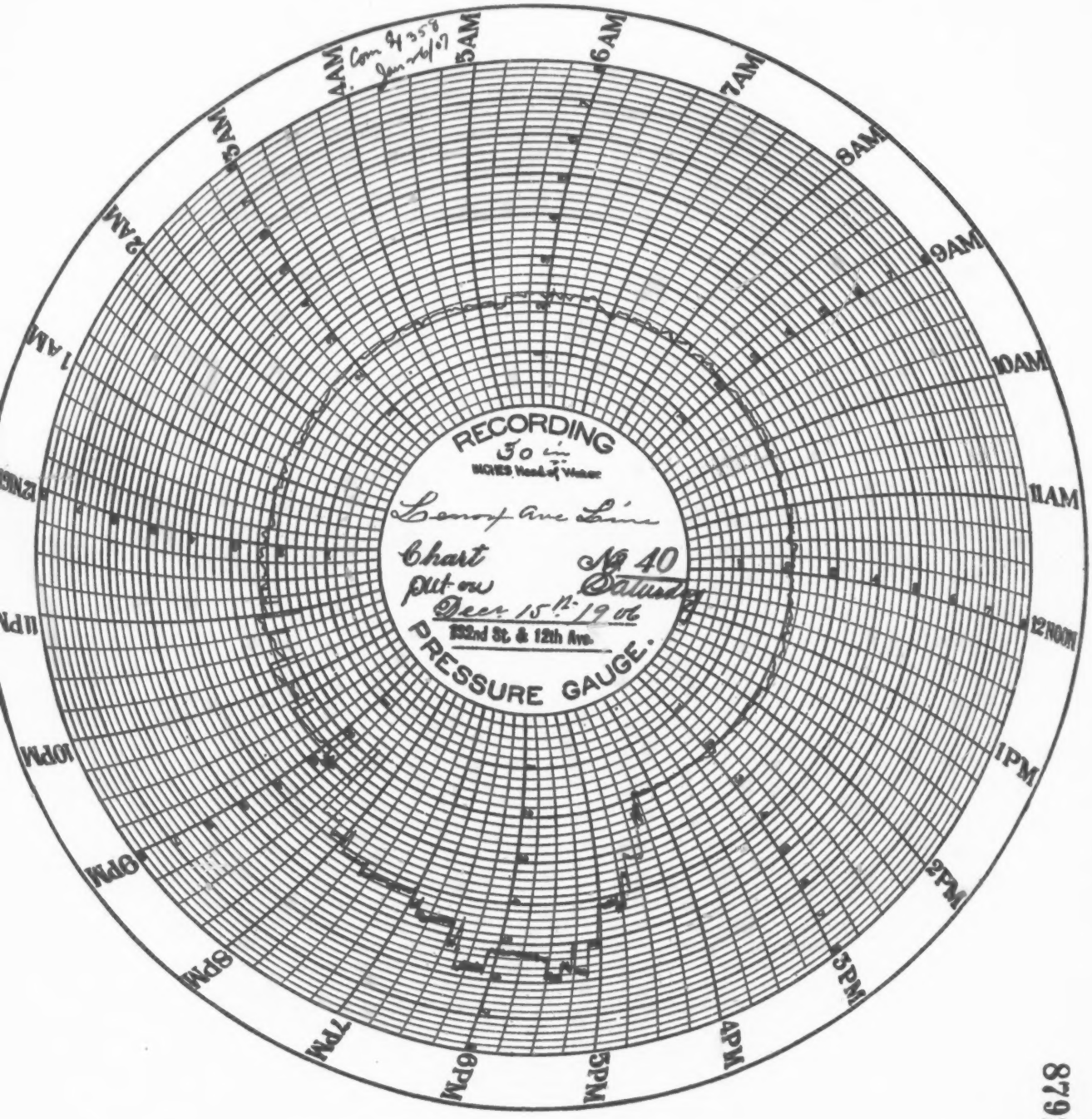
COMPLAINANT'S EXHIBIT 358

January 26, 1907



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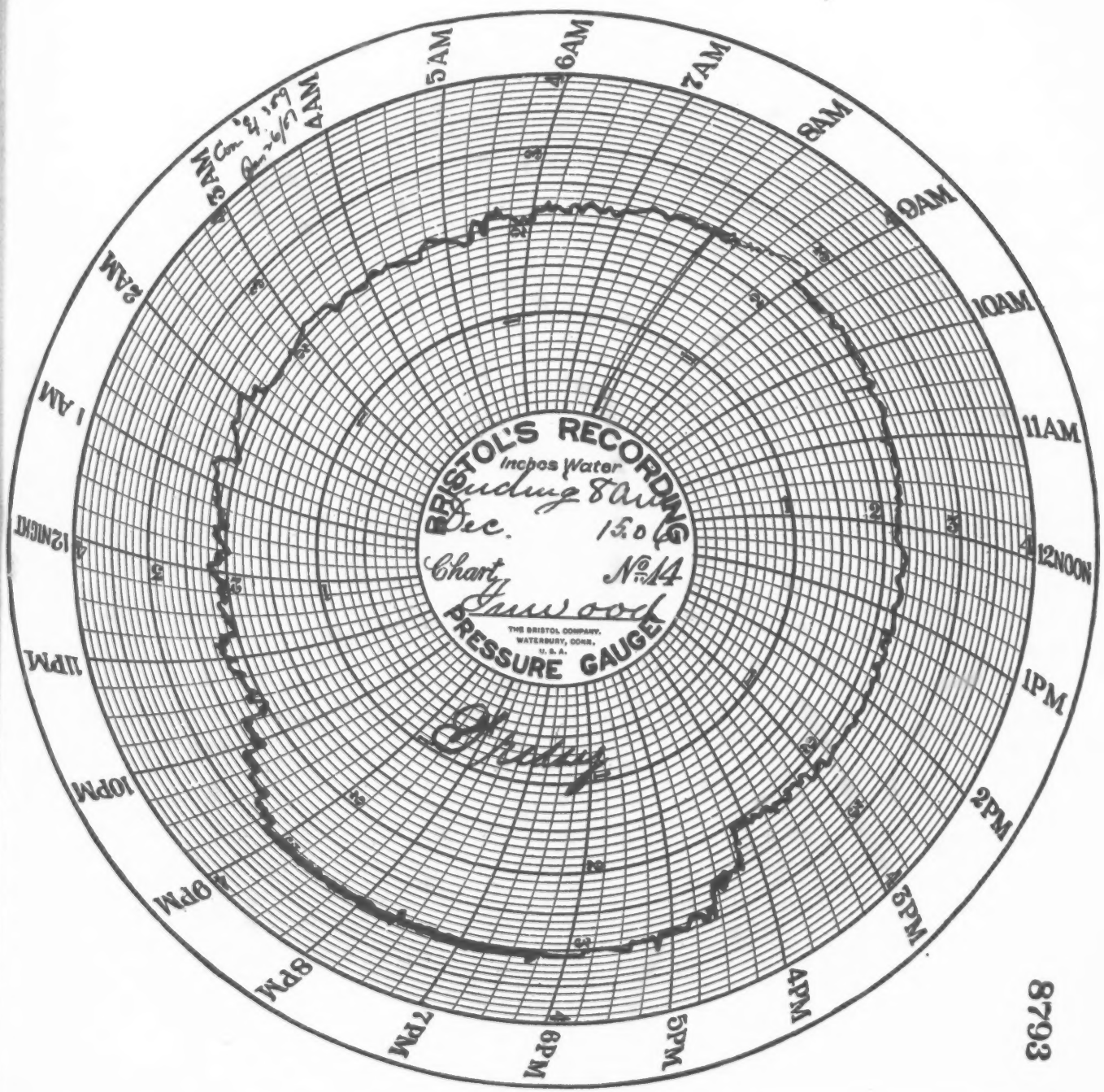
COMPLAINANT'S EXHIBIT 359

January 26, 1907



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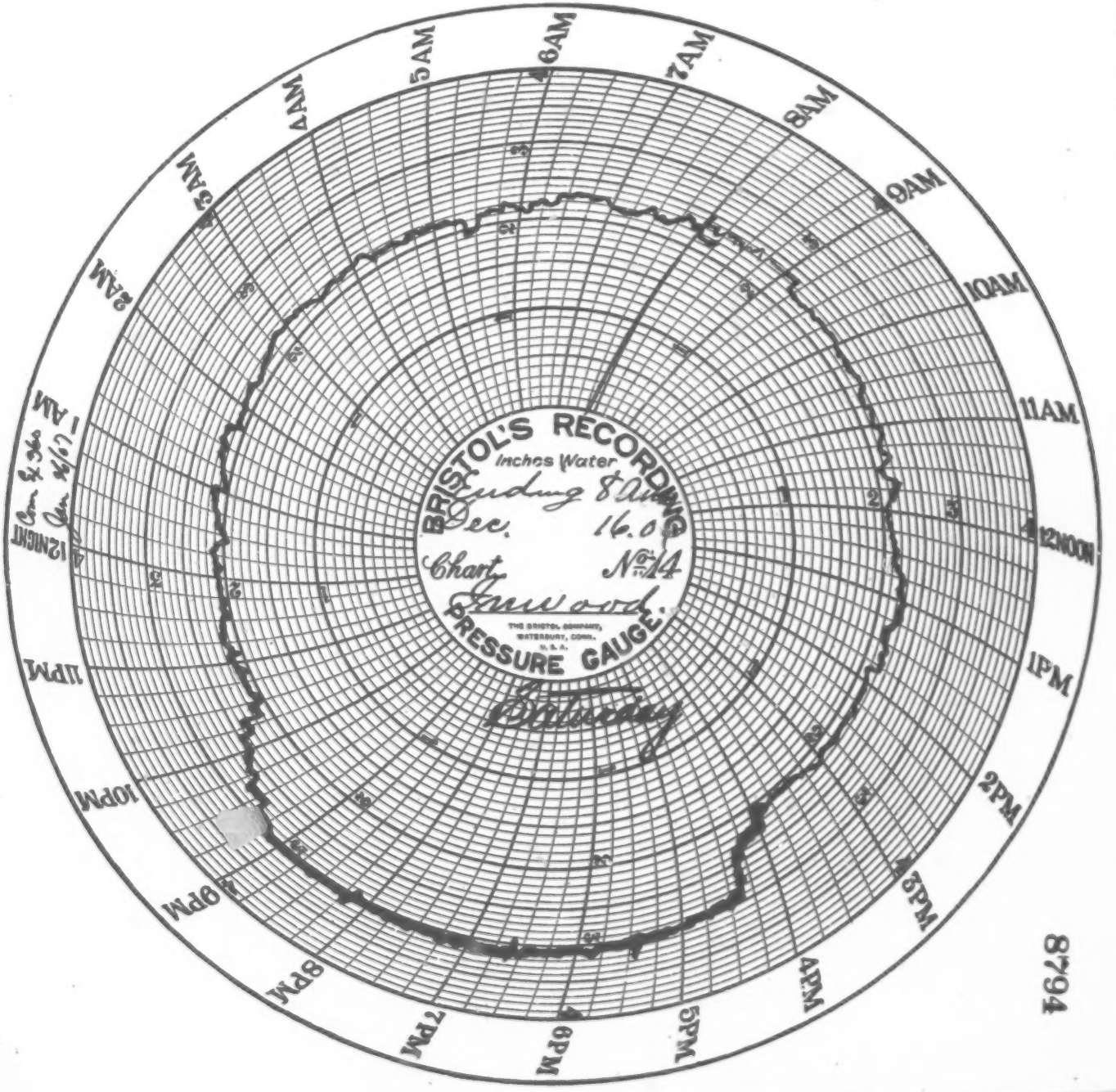
COMPLAINANT'S EXHIBIT 360

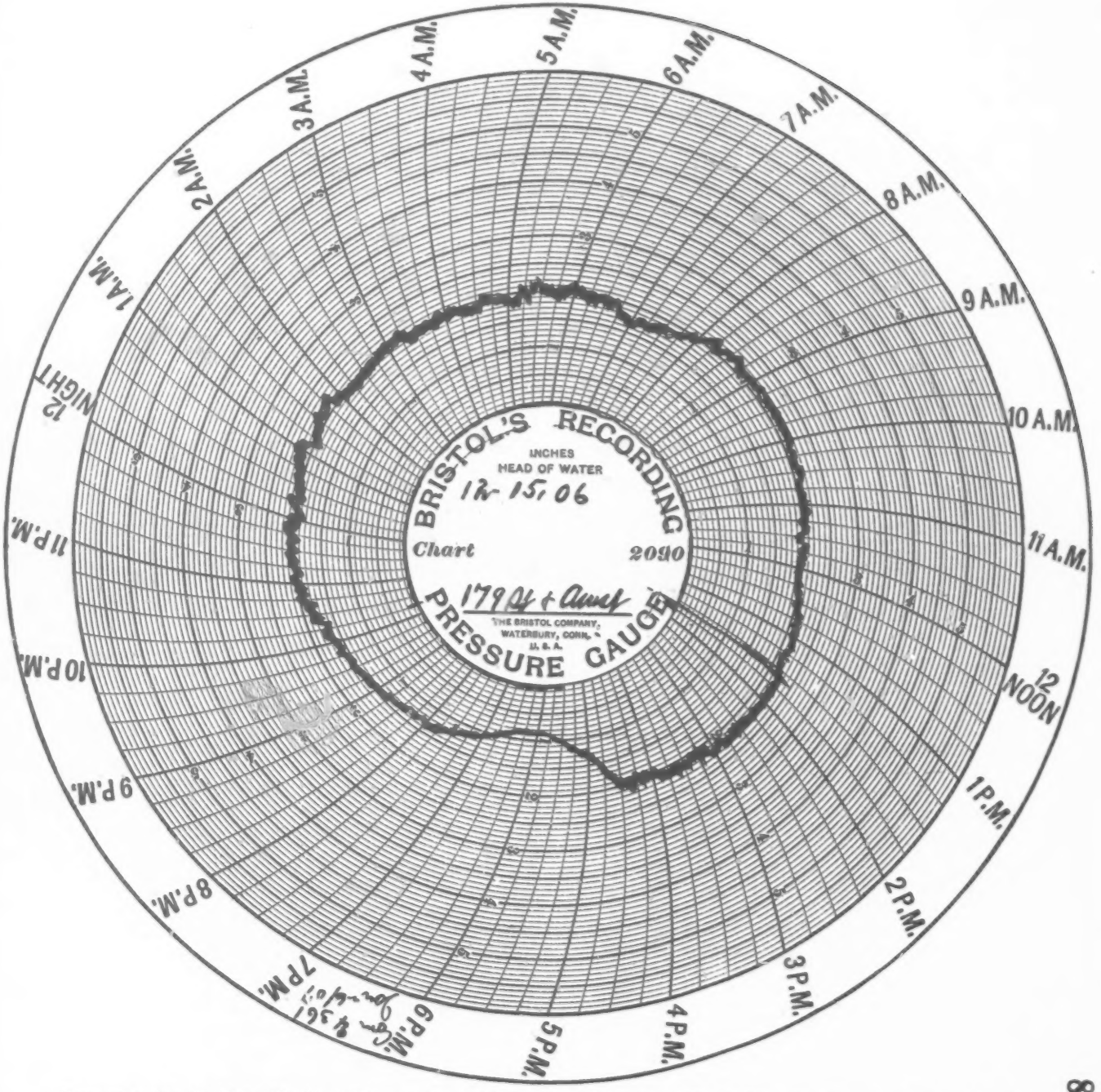
January 26, 1907



8794

COMPLAINANT'S EXHIBIT 361

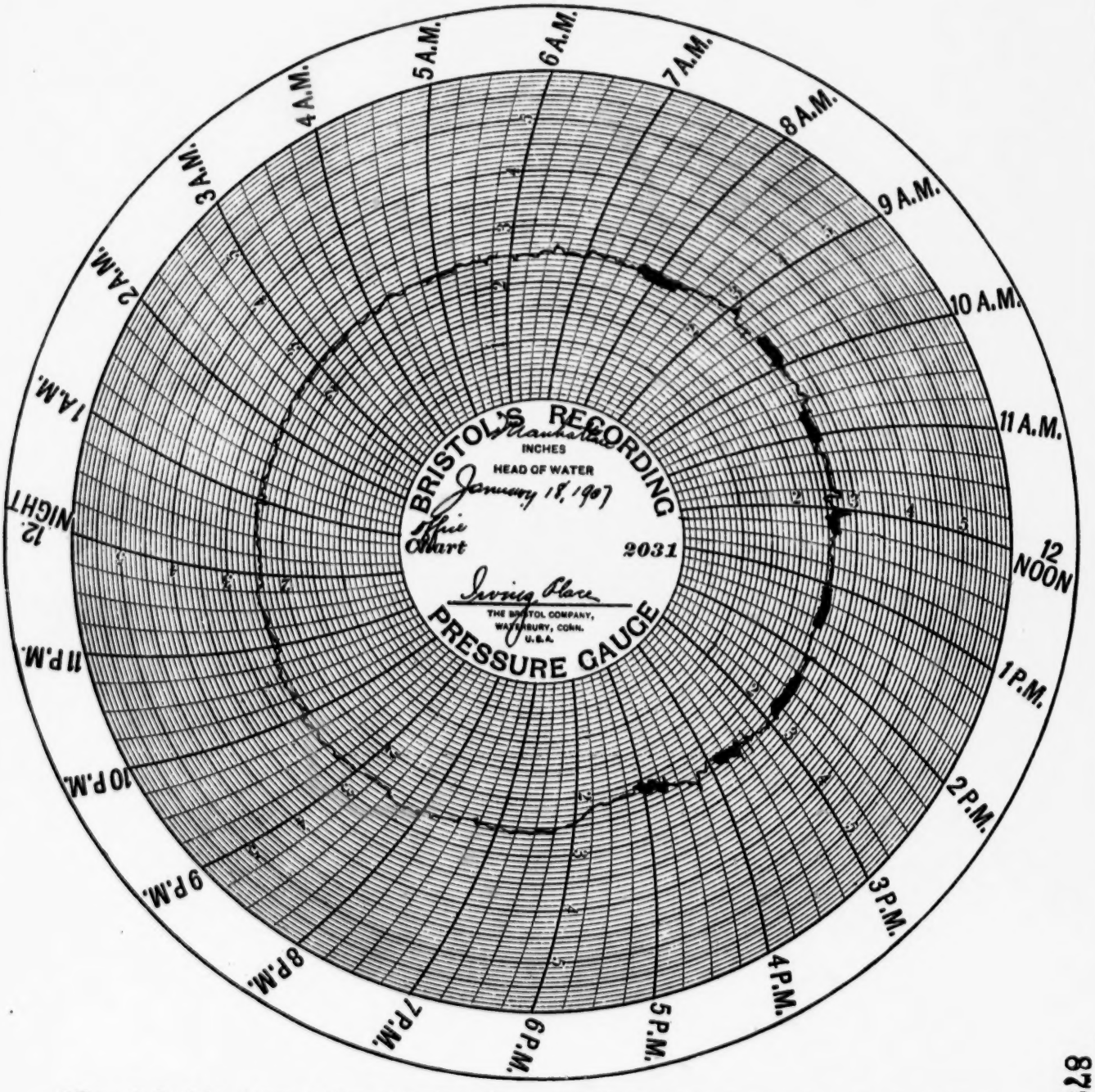
January 26, 1907



Pressure for 24 Hrs., Ending, Removed—1:35 P. M., December 15, 1906. Pressure at Head of Service in Pumping Station. Approximate Elevation of Gauge, 40 ft. Below Street Surface at Intersection 179th and Amsterdam. Recording Gauge Tested—Correct with Water Gauge.

8795

COMPLAINANT'S EXHIBIT 363-A.



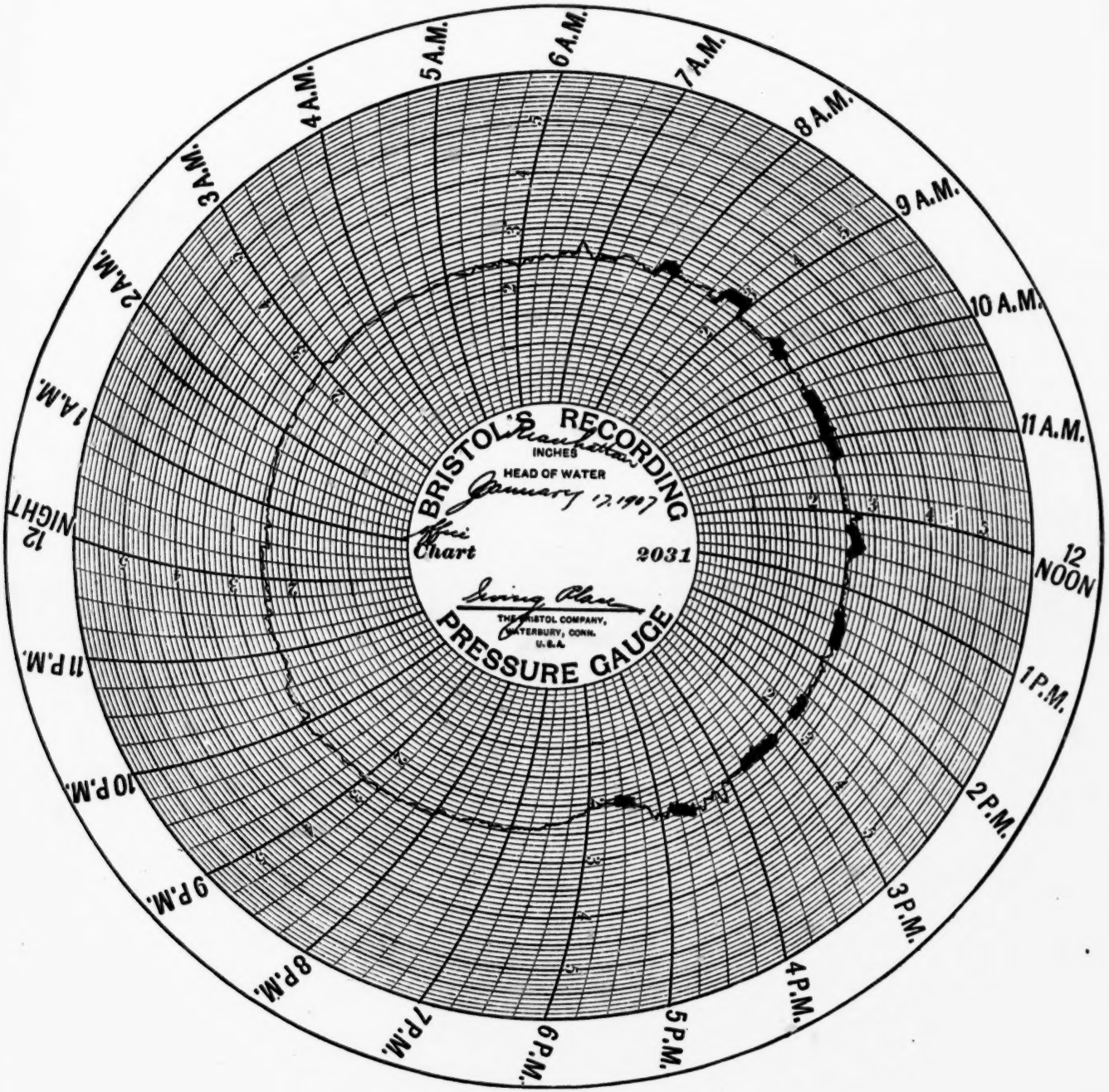
Office, 45 ft. 8 in. Above Cellar at Irving Place. Specific Gravity. Removed, A. M. Tested with Water Guage.

THOMAS J. BYRNE.

8796

POOR COPY

COMPLAINANT'S EXHIBIT 363-B.



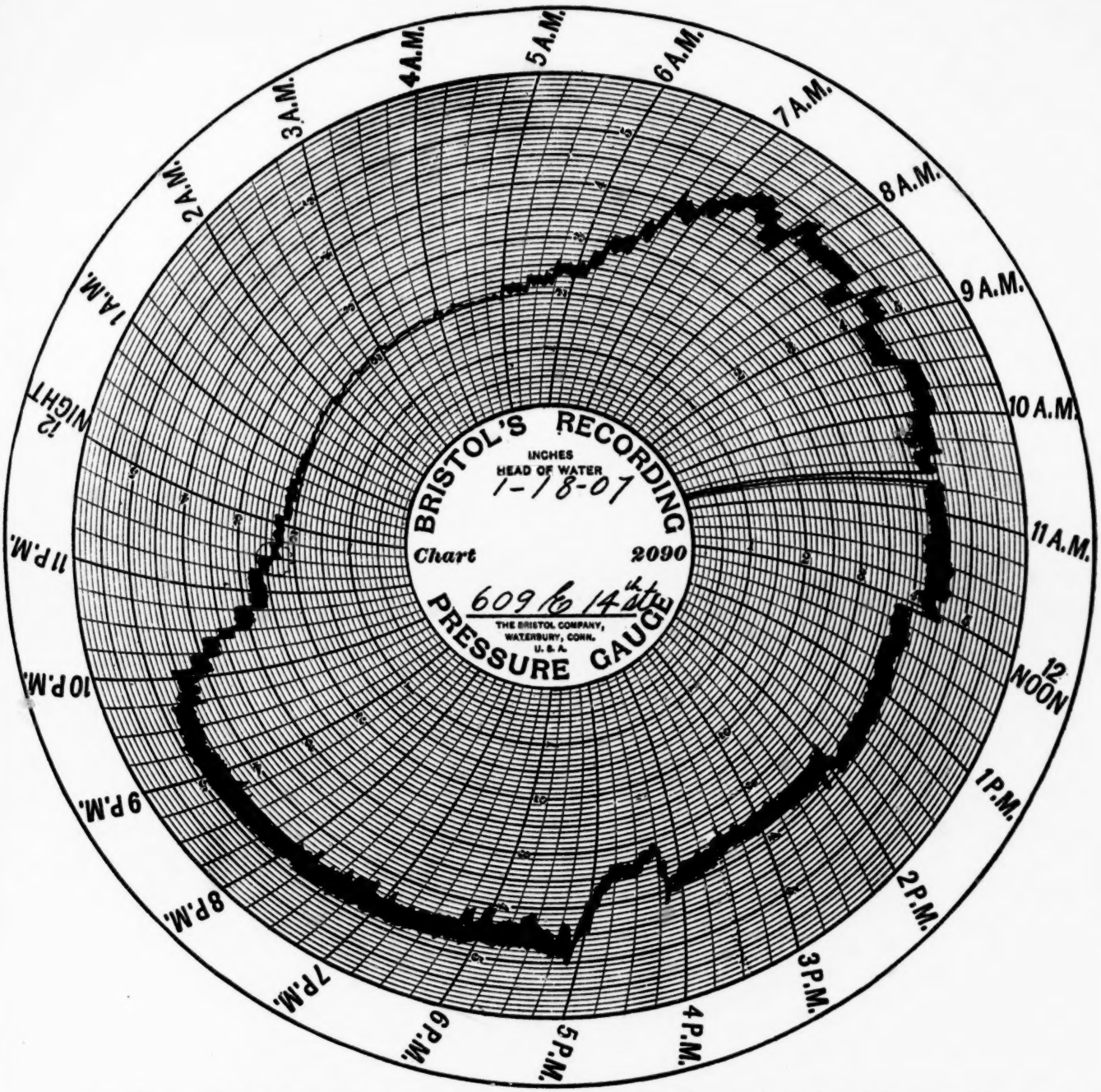
Removed, A. M. Tested with Water Gauge.

THOMAS J. BYRNE.

8797

POOR COPY

COMPLAINANT'S EXHIBIT 364.

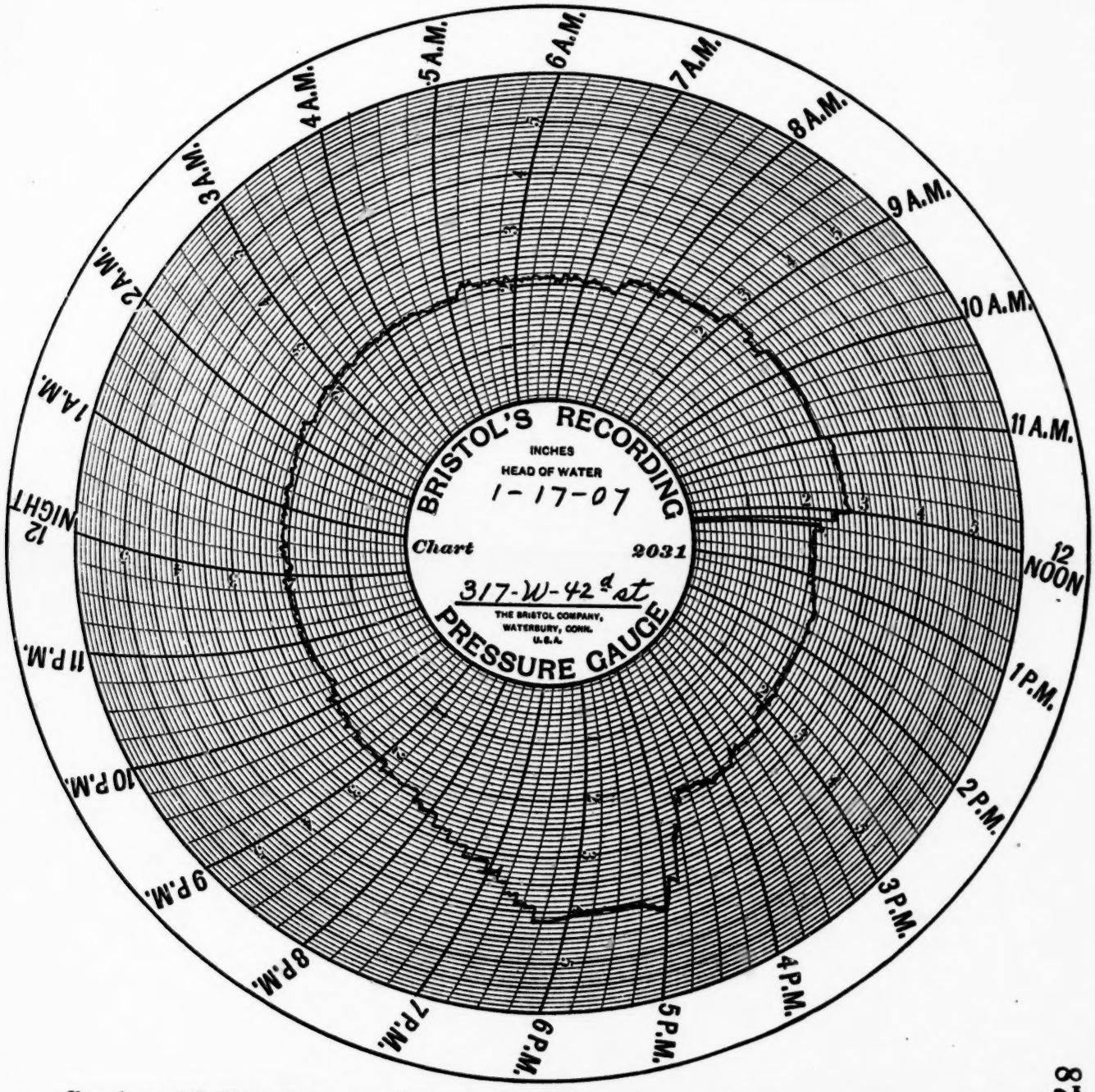


Premises—609 E. Fourteenth St. Style of Bldg.—Apartment House. Location of Gauge—Cellar.
Time Removed—10:40 A. M., Jan. 18, 1907. Bristol Gauge, 43. Water Gauge, 43. Special.
Time O. K.

DANIEL F. SULLIVAN.

8798

COMPLAINANT'S EXHIBIT 365-A.



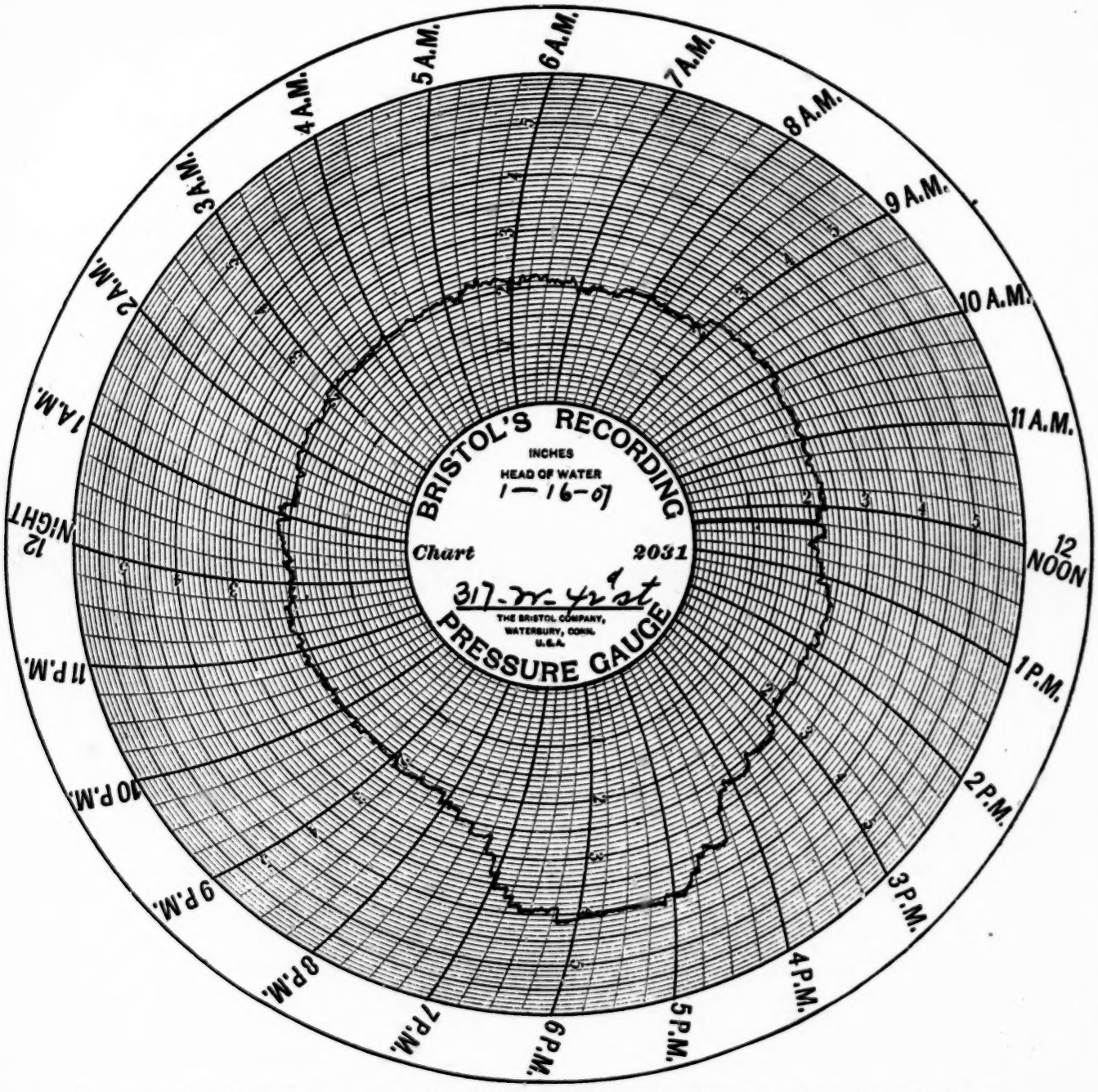
Premises—317 West Forty-second St. Style of Bldg.—Apartments. Location of Gauge—Store Cellar. Size of Service—2 in. Service in Use—Yes. Company's Service—Consolidated. Time Removed—12:15 P. M., Jan. 17th, 1907. Bristol Gauge, 25. Water Gauge, 25 f.

DOUGLAS H. MILLER.

6799

POOR COPY

COMPLAINANT'S EXHIBIT 365-B.

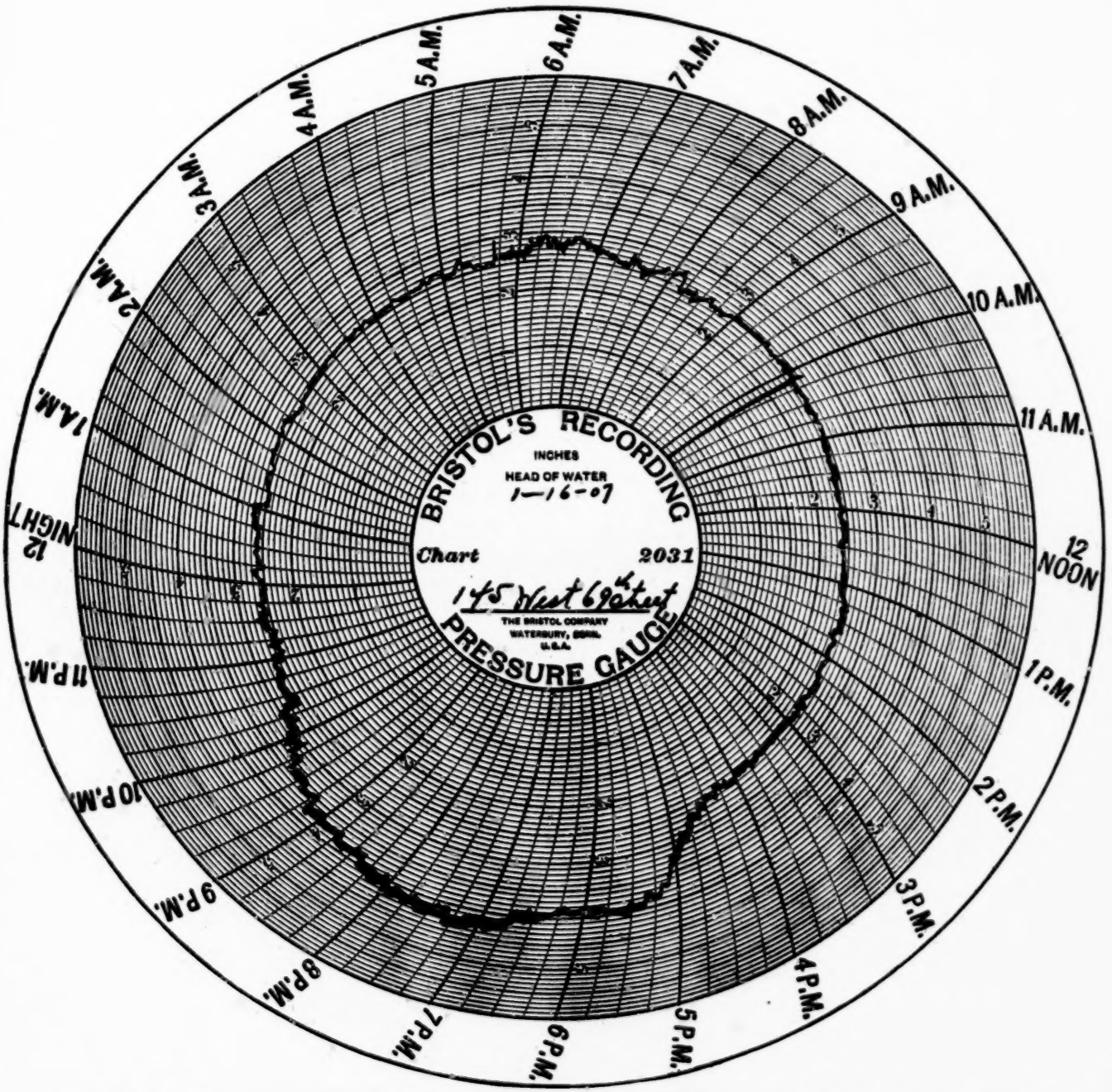


Premises—317 West Forty-second St. Style of Bldg.—Apartments. Location of Gauge—Store Cellar. Size of Service—2 in. Service in Use—Yes. Company's Service—Consolidated. Time Removed—12:15 P. M., Jan. 16, 1907. Bristol Gauge, 21. Water Gauge, 21 f. 5 Minutes Slow.

DOUGLAS H. MILLER.

8800

COMPLAINANT'S EXHIBIT 366-A.

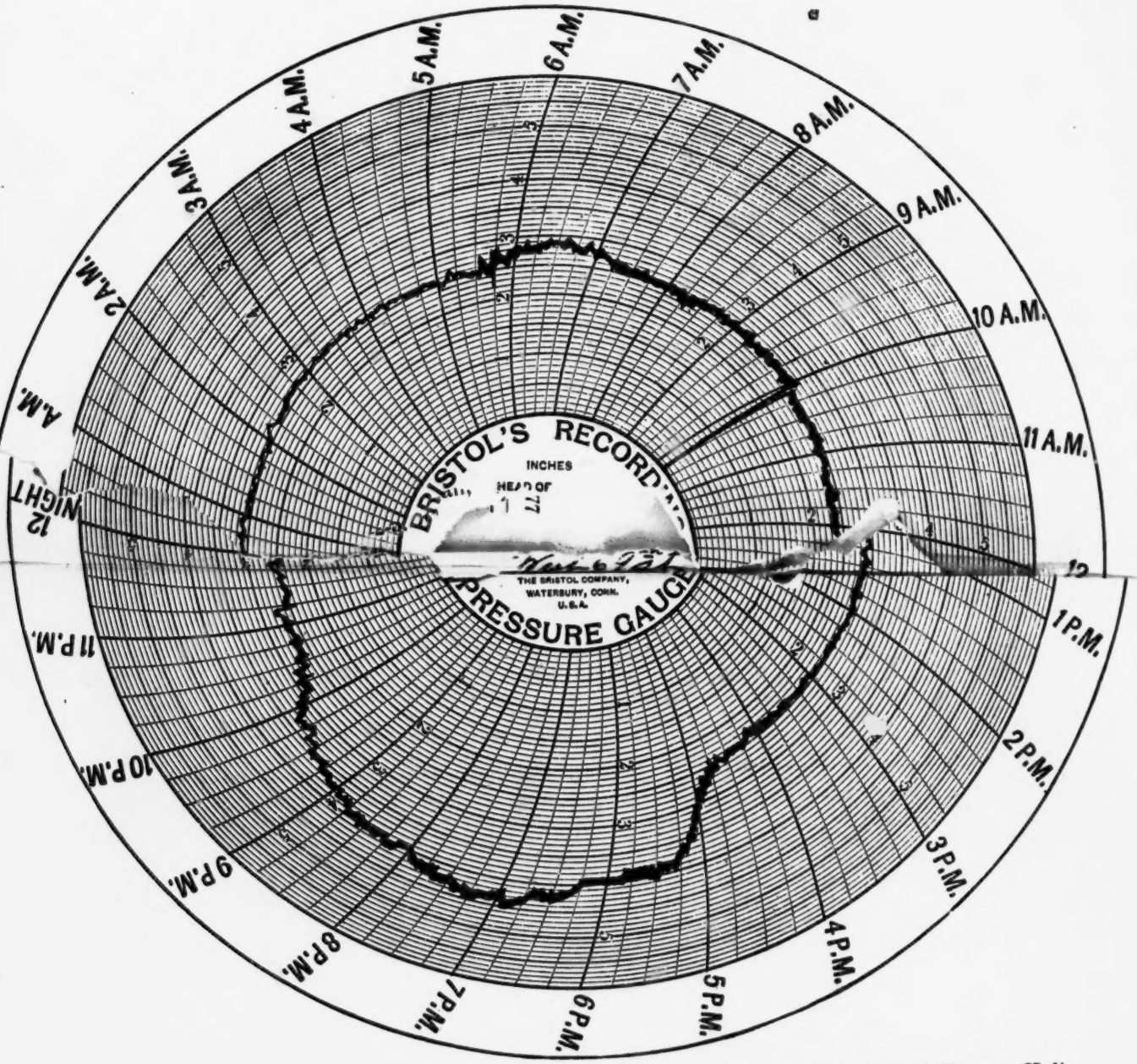


Premises—145 West Sixty-ninth St. Style of Bldg.—Apartments. Location of Gauge—Hall, Cellar. Size of Service—2 in. Service in Use—Yes. No. and Size of Meters—4-10—2-5. Company's Service—Consolidated. Time Removed—10:15 A. M., Jan. 16th, 1907. Bristol Gauge, 25 Water Gauge, 25. f 22. 7 Minutes Fast.

DOUGLAS H. MILLER.

8801

COMPLAINANT'S EXHIBIT 366-B.



Premises—145 West Sixty-ninth St. Style of Bldg.—Apartments. Location of Gauge—Hall Cellar. Size of Service, 3 in. Service in Use—Yes. No. and Size of Meters—4-10—2.5 Company's Service—Consolidated. Time Removed—10:15 A. M., Jan. 17th, 1907. Bristol Gauge, 26 Water Gauge, 26. f 22. 7 Minutes Fast.

DOUGLAS H. MILLER.

2082

POOR COPY

COMPLAINANT'S EXHIBIT 367.

CONSOLIDATED GAS COMPANY OF NEW YORK.

GAS MAKE AND GAS SALES FROM JUNE TO OCTOBER, 1906.

	June	July	August	September	October	
MANUFACTURED:						
14th Street Station	97,809,000	87,495,000	90,694,000	94,565,000	106,143,000	
21st Street Station	296,709,000	227,494,000	245,398,000	303,882,000	416,603,000	
42d Stret Station	88,450,000	84,096,000	86,103,000	85,944,000	95,686,000	
44th Street Station	153,193,000	123,375,000	142,637,000	161,210,000	194,467,000	
99th Street Station	86,778,000	94,624,000	97,464,000	91,188,000	92,880,000	
Total	722,939,000	617,084,000	662,296,000	736,789,000	905,779,000	3,644,887,000
MANUFACTURED UNDER AGENCY AGREEMENT:						
New Amsterdam Gas Company	106,098,400	93,237,000	176,554,700	220,349,900	249,902,500	
Standard Gas Light Company	42,969,060	17,020,140	25,562,850	23,046,000	54,329,527	
Mutual Gas Light Company	5,754,800	208,000	17,160,100	13,528,800	17,926,200	
Central Union Gas Company	5,133,600	5,382,900	6,118,800	6,896,400	8,225,900	
Total	159,955,860	115,848,040	225,396,450	263,821,100	330,384,127	1,095,46
Total Make	882,894,860	732,932,040	887,692,450	1,000,610,100	1,236,163,127	4,740,292,57
SALES:						
General Office	25,697,700	20,322,200	21,881,100	23,324,500	29,748,500	
Hester Street	218,327,600	180,933,800	182,207,600	210,266,200	237,383,300	
Irving Place	258,935,900	202,312,200	190,665,700	232,833,800	264,238,500	
42d Street	223,963,500	165,316,100	150,807,500	186,062,500	225,843,400	
114th Street	281,735,820	227,796,120	219,728,270	269,351,620	307,559,120	
Street Lamps	15,964,000	16,598,890	18,737,369	20,999,058	25,035,364	
Total Sales	1,024,624,520	813,279,310	784,027,539	942,837,678	1,089,808,184	4,654,577,231
Unacounted For	*141,729,660*	*80,347,270*	103,664,911	57,772,422	146,354,943	85,715,346
Actual on Hand, June 1st, 1905					28,660,000	
Actual on Hand October 31st, 1905					27,854,000	806,000
					Unaccounted For..	86,521,346

MANUFACTURED—Including Manufactured Under Agency Agreement	4,740,292,577	
Decrease in "on Hand"	806,000	4,741,098,577
Accounted For		4,654,577,231—Unaccounted For, 86,521,346 or 1.8249%.

POOR COPY

COMPLAINANT'S EXHIBIT, 368.

CANDLE POWER—CALENDAR YEAR—1905.

Monthly Averages.

Date 1905	14th Street Works	14th Street City	21st Street Works	21st Street City	42nd Street Works	42nd Street City	44th Street Works	44th Street City	99th Street Works	99th Street City	Average Works	Average City
January	23.05	20.48	25.14	21.24	22.81	23.09	24.85	20.53	25.23	22.41	24.21	21.55
February	22.70	20.49	24.95	20.06	22.90	23.51	24.70	20.37	25.10	21.43	24.07	21.17
March	23.45	20.26	24.83	19.91	23.30	23.81	25.82	20.38	25.31	22.15	24.54	21.30
April	23.89	20.24	25.07	21.69	23.57	23.36	23.47	21.76	24.91	23.13	24.18	22.04
May	24.26	20.22	25.50	20.44	23.50	23.04	24.14	21.47	24.76	23.41	24.43	21.72
June	26.02	22.25	26.86	23.18	23.91	23.06	26.05	23.11	26.03	23.46	25.77	23.01
Avge. 6 Mos.	23.89	20.66	25.39	21.09	23.33	23.31	24.84	21.27	25.22	22.66	24.53	21.80
July	30.38	24.56	27.72	24.57	26.36	25.52	28.06	25.21	29.10	25.66	28.34	25.10
August	28.89	23.72	26.50	23.61	24.84	25.10	26.40	24.10	26.44	25.52	26.61	24.41
September	27.25	23.60	26.20	23.23	25.12	24.16	25.88	23.18	25.47	24.15	25.98	23.66
October	26.57	23.44	26.38	23.39	25.62	24.54	25.77	23.35	24.98	24.31	25.86	23.81
November	25.84	23.53	26.69	23.61	24.61	24.54	24.51	24.25	24.46	24.54	25.22	24.09
December	25.13	23.37	26.51	23.39	24.45	24.49	24.21	24.34	24.42	24.58	24.94	24.03
Avge. 6 Mos.	27.34	23.70	26.66	23.63	25.16	24.72	25.80	24.07	25.81	24.79	26.16	24.18
Avge. Year.	25.62	22.18	26.03	22.36	24.25	24.02	25.32	22.67	25.52	23.75	25.34	22.99

1905

8804

8805 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, Volume III, Exhibits, numbered from 8394 to 8804 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Consolidated Gas Company, Complainant-Appellee, against Julius M. Mayer, as Attorney General, *et al.*, Defendants-Appellants, as the same remain of record and on file in my office (Volume III, Exhibits).

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 15th day of May, in the year of our Lord One Thousand Nine Hundred and eight and of the Independence of the said United States the One Hundred and thirty-second.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. —— —— *vs.* —— ——. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

8805*a* Circuit Court of the United States, Southern District of New York.

CONSOLIDATED GAS COMPANY OF NEW YORK, Complainant,

vs.

JULIUS M. MAYER, as Attorney General of the State of New York, *et al.*, Defendants.

Before Arthur H. Masten, Esq., Special Master.

EXHIBITS.

VOLUME IV.

U. S. Circuit Court, Southern District N. Y. Filed June 24, 1907. John A. Shields, Clerk.

8805*b*

EXHIBITS.

VOLUME IV.

8805 COMPLAINANT'S EXHIBIT 369.

PROCEEDINGS OF THE SENATE COMMITTEE OF 1886,

CONTAINED IN SENATE DOCUMENT FORTY-SEVEN OF 1886,

EXCLUDING THE REPORT OF SAID COMMITTEE, AND THE REPORT OF MR. YALDEN AND THE SCHEDULES OF APPRAISEMENTS, ALL OF WHICH HAVE BEEN HERETOFORE OFFERED IN EVIDENCE AND PRINTED HEREIN.

8806 PROCEEDINGS.

NEW YORK CITY, *October* 15, 1885.

The special committee of the New York State Senate, consisting of Hon. John I. Gilbert, Chairman, Hon. Thos. W. Robinson and Hon. M. C. Murphy, met at the Fifth Avenue Hotel, at 4 o'clock, p. m., this day, J. I. Gilbert and M. C. Murphy being present, by authority of a resolution of the Senate, adopted on May 15, 1885, which reads as follows:

"WHEREAS, It appears by the records of the Secretary of State, that the New York, Manhattan, Metropolitan, Municipal, Knickerbocker and Harlem Gas Companies are the only corporations that have consolidated, pursuant to the provisions of chapter 367 of the Laws of 1884; and

"WHEREAS, The total share capital of said companies, prior to said consolidation, was represented by the par value of seventeen millions of dollars; and

"WHEREAS, It appears in evidence, before a special committee of the Senate, that the said par value is represented in the said consolidation by a nominal share capital of $35,440,000, par value, which, it has been alleged, is beyond "the fair aggregate value of the property, franchises and rights" of the said constituent companies as required by said act; therefore,

8807 "*Resolved*, That a special committee of three Senators be appointed by the President of the Senate and directed to investigate the said consolidation and capitalization, and to report at the next session of the Legislature whether in fact said statute has been evaded, disregarded or in any manner violated, and whether the said consolidation has been capitalized on the said basis of 'the fair aggregate value of the property, franchises and rights' of its constituent companies or otherwise; and what legislation, if any, in respect to lighting companies, is required by the public interests; and that such committee have power to send for persons and papers and to employ a stenographer, counsel and experts for the purpose of aiding in such investigation.

By order.

JOHN W. VROOMAN, *Clerk.*

"*Ordered*, That Senators Gilbert, Robinson and Murphy be such committee."

On motion of Senator MURPHY, Matthew W. Tanner was appointed stenographer to the committee.

On motion of Senator MURPHY, Theodore Desrochers was appointed sergeant-at-arms of the committee.

On motion of Senator MURPHY, the subject of employing counsel and experts to assist the committee was left in the hands of the Chairman, Senator Gilbert, to select whom he pleased.

The committee, after some consultation, thereupon adjourned, to meet at the Fifth Avenue Hotel, at 5 P. M., on the 16th day of October, 1885.

Adjourned.

8808 NEW YORK CITY,
FIFTH AVENUE HOTEL, *October* 16, 1885.

The committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Michael C. Murphy.

Henry E. Tremain appeared as counsel to the committee. James Yalden, as expert accountant. Matthew W. Tanner, as stenographer.

The CHAIRMAN: I regret that one of our number, Senator Robinson, is unable to be present with us this week, but we expect him at subsequent meetings. Senator Murphy and myself thought it best to hold a preliminary meeting this evening. Just at this stage of the proceedings we would be glad to hear from any one who may be present in respect to the purpose for which this committee was organized, then we will go into executive session, if thought best, for the purpose of ascertaining the present status of the inquiry—that is, consider what has already been done, and then consider what work remains for us to do. I see that the president of the Gas Consumers' Association, Mr. Sherwood, is present, and we would be pleased to hear from him on the subject.

Mr. SHERWOOD: Mr. Chairman, and President of the Committee, the Gas Consumers' Association prepared a letter, which was sent to the presiding officer to-day, that contains the substance and the points of what I may say. In it we request that this committee shall investigate this matter thoroughly. The question of the supply of gas to the consumers of the city of New York was pretty well ventilated last winter, although the sessions closed at a late time in the winter, and brought it near the adjournment of the
8809 Legislature, which prevented that committee from going into as thorough an examination as we deemed necessary to bring out all the facts in relation to the making and selling of gas in the city of New York, so that each consumer should understand how much he was paying for it, what profit he was paying for it, and what it might be reasonably made and sold for. As an association I believe the Gas Consumers' Association is composed of substantial citizens of New York, property owners and gas consumers. The object of that association is simply that the people shall have gas supplied to them in the city of New York at a fair compensation,

giving the manufacturer as fair and reasonable a profit as any other business that is carried on in the city. We hold that gas should not be any more monopolized in New York than food and clothing. It is just as much a detriment to the laboring class to have gas monopolized as to have a capitalist, like Mr. Astor, for instance, monopolize any other matter in the city of New York. The element of light, where we lengthen out the hours of the day, is a great item to the poor man who is obliged to work into the hours of the night, and if he buys his gas to work by and is paying somebody fifty to one hundred per cent. profit, we contend that as a people, that is a matter of great interest to the prosperity of the city of New York, and we come and ask you to devise some means by which every gas consumer in the city shall receive gas at a proper remuneration, and that every man who has a dollar invested in gas stock shall be thoroughly protected.

The CHAIRMAN: Is there any one else present who wishes to add anything on the subject? I have no doubt the committee will take it up in the same spirit in which these remarks have been
8810 made. Just what line of inquiry, and just what method it will be thought best to adopt is a subject for consideration, and for that purpose we will now go into executive session if desired, and of our subsequent meetings due notice will be given, so that all parties interested in the matter will have an opportunity to be heard.

Will Mr. Tremain indicate what shall be the next line of inquiry as a basis *of* start from?

Mr. TREMAIN: The actual capital of the constituent companies; the shares, and the bonds represented, actual capital in their inception, and in their subsequent enlargement.

The CHAIRMAN: That is the ultimate end, to see the actual capital that each company contributed to the stock of the consolidated company.

Mr. TREMAIN: Then the distribution of the share capital of the Consolidated Company to these constituent companies—the proportion, and what was done with the remainder, and the history of that share capital from the time of the consolidation to the present time. Do we cover it?

Mr. YALDEN: I think so, with the cost of the plant and the works, etc., that stand on the books of these companies at a certain sum. In many cases no depreciation has been written off year by year to reduce that cost to the actual cost of the amount. Take the subject of pipes about the streets; it is all very well to say that they last forever. But they don't. None of the companies has depreciated the cost of laying their pipes, and that, I think, should be taken into account.

Mr. TREMAIN: I will read the second paragraph on page 9 of the report of the special Senate committee, of last winter, Senator E. B. Thomas, chairman, which is as follows:

"There was included among the items mentioned in the
8811 New York Company, 121 miles of street mains, rated at $945,982.45. This appraisement (which yet requires verifi-

cation from the books), covers about sixteen miles more of street mains than appears by the report of the company to the department of public works for the quarter ending December 31, 1884, were in actual use by the New York Company at the time of the consolidation. It further appears that of this sixteen miles, nine miles had actually been taken up, or were abandoned by the company during the year, yet were included as part of the inventoried property on which the capitalization was based. Other instances of this kind may exist."

The CHAIRMAN: Now, if we can get at the point where we can commence, and be sure of that, and move on in a right order from that point, that is about all we can accomplish to-night. Now, where would you begin? On the whole, it occurs to me if we can begin at some point where the expert can take the work up it will accommodate you and me and everybody. What is there we can do in that way?

Mr. TREMAIN: I don't think it is worth while to expend a very * * * The remaining portion of this discussion is not reported. The committee remained in executive session until,

On motion of Senator Murphy, the committee adjourned subject to the call of the chairman.

The chairman was authorized with the aid of counsel and expert, to proceed with the examination of books and accounts, and otherwise to prepare for further proceedings when such examination had sufficiently progressed.

8812 TESTIMONY.

NEW YORK CITY, FIFTH AVENUE HOTEL,
November 23, 1885.

The committee met upon the call of the Chairman.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the committee.

JAMES W. SMITH, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are the treasurer of the Consolidated Gas Company of New York?

A. I am.

Q. Have you brought with you the original schedules or appraisements of properties of the constituent companies entering into the consolidation?

A. Yes, sir.

Q. Will you please produce them so that they may be marked by the committee for conve-ience.

(The books were produced and marked.)

Mr. TREMAIN: The witness produces the appraisements of the New York, which are marked "A 1," being valuation of buildings,

gas producing, gas storage, coal storage, tools, fixtures, implements and betterments of every description, constituting the plant at Twentieth street and East river. "A 2," names the meters and services; "A 3," real estate. Manhattan Company, marked "B 1," "B 2," "B 3," and "B 4;" the Metropolitan, marked "C 1," book; Municipal, marked "D;" Knickerbocker, "E;" Harlem, "F."

8813 Q. In this Metropolitan you took out a paper—was not that an abstract of the book itself?

A. I believe it was.

Q. Will you please produce that? What is the latter book?

A. "C 1."

Mr. TREMAIN: Mark the Metropolitan "C 1," being the book—the paper in it "C 2."

Q. Since the business of the Consolidated Company has been conducted you have been its treasurer?

A. Yes, sir.

Q. And have had charge of its financial accounts and papers?

A. I have had access to them; the financial matters I have charge of.

Q. Have you made any reports whatever to anybody in writing since November, 1884, showing the financial condition of the company?

A. No, sir.

Q. Have you prepared any papers showing the financial condition of the Consolidated Company since November, 1884, to the present time?

A. No, sir.

Q. Have any such been prepared by anybody, under your direction or otherwise?

A. The books show—the balance sheets.

Q. Who has prepared the balance sheets?

A. The chief book-keeper, every month.

Q. What is his name?

A. Mr. Young.

Q. When was the last one prepared?

A. A few days ago, up to the 1st of November; just got through with them.

Q. Does the executive committee keep a minute of its meetings?

A. Yes, sir.

Q. Who is secretary?

A. The secretary of the company.

Q. Does he keep the minutes of the board meetings?

A. Yes, sir.

Q. How many books do those records comprise?

A. A book of minutes for each.

8814 Q. Has there been a paper prepared showing the financial condition of the Consolidated Company from November, 1884, to the present time?

A. A great many memorandums made by the book-keeper to bring it up to that point; as to the financial condition of the com-

pany, there has been no preparation made of that; the amount of money paid out, and the amount received.

Q. As a director of the company, have you any knowledge whatever of any paper or papers showing the operation of the company, or its financial condition between November, 1884, and the present time, except those balance sheets?

A. Only the book-keeper's memoranda.

Q. Do you testify that that is all there is on that subject?

A. No, sir; that is as far as I know; if this committee would like to have any information I would like to produce it if you will state what you want.

The CHAIRMAN: The counsel is asking what papers there are.

The WITNESS: All right, go on.

Q. I want to know what other papers there are in existence within your knowledge as director other than those balance sheets, that indicate the financial condition of the company?

A. I think I have answered the question to the best of my ability.

Q. Whether you have any knowledge showing the financial condition of the company?

A. There were bookkeepers' memorandums submitted to me.

Mr. TREMAIN: That does not answer the question.

The CHAIRMAN: Answer the question; do you know of any others?

A. I do not.

8815 Q. When the dividend was declared, or about that time, was not there a statement prepared and submitted to the board of directors?

A. No, sir; not to my recollection.

Q. Did any committee or the board of directors make a report upon that subject?

A. I don't know; I don't recollect.

Q. Will you produce here the minutes of the executive committee, and the minutes of the board of directors, and those monthly balance sheets that you refer to, and other memorandums of the bookkeepers to which you refer?

Mr. Chairman, I think the examination of Mr. Smith had better be suspended until that is done.

The CHAIRMAN: It is understood, Mr. Smith, that you will produce them?

A. Yes, sir.

Mr. TREMAIN: We would like to have them produced immediately, so that they may be examined while the committee is sitting, if practicable.

The CHAIRMAN: Now.

The WITNESS: Our minute-books are in use; there are regular meetings on Wednesdays, and a meeting of the executive committee to-day at three o'clock; on Wednesday the regular monthly meeting takes place.

Mr. TREMAIN: I think if the committee suspends the examination of the witness we can examine those books in a very short time.

The CHAIRMAN: How soon may we expect the books?

A. I want one book this afternoon for use; but between now and three o'clock if you want the general minute-book I can produce it.

Mr. TREMAIN: Please produce immediately under the direction of the committee the minute-book of the executive committee,
8816 and the minute-book of the board of directors; and please cause to be produced as soon thereafter as practicable the papers that you have referred to, so that the committee may have them for their expert as soon as possible; do you accede to that, Mr. Smith?

A. Subject to the proper use of the books by the company; I should suppose there ought to be no difficulty.

Q. You will produce the books as requested, and we will protect your rights; you accede to that?

A. Yes, sir.

Q. When that dividend was declared in June was not there a recommendation submitted to the board of directors by the executive committee composed of one or more of the officers of each company?

A. I don't recollect.

Q. Was not there any thing in writing?

A. No, sir.

Q. Are there no reports of the executive committee that have been made to the board of directors between November, 1884, and the present time?

A. The minute-books of their meetings are the reports to the board.

Q. There were no reports submitted except the minutes contained in the meetings?

A. I believe that is the fact.

THOMAS F. ROWLAND, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. What is your business?

A. I am an engineer, sir, and follow an engineering business.

Q. You have had some experience in gas manufacturing, have you not?

A. Yes, sir, gas plant manufacturing.

8817 Q. Will you please tell the committee what has been your experience?

A. I built the Municipal Gas-light Company's works, at the foot of Forty-fourth street, and also the Knickerbocker works at Ninety-ninth street and Second avenue; I rebuilt the New York Gas Works almost entirely; I built the Nassau Company's works, of Brooklyn, L. I.; I built a large gas works for the Boston Gas-light Company; I have built a number of small gas works at different parts of the State; I can hardly enumerate them; I don't remember them.

Q. You have been in that line of business for many years?

A. Yes, sir.

Q. Who applied to you in 1884 to value the gas plant of the New York companies?

A. I was applied to to value the New York Gas Company by Mr. Lees; I was applied to to value the Manhattan Company, I think, by Mr. Gawtry, acting as the agent for the Manhattan Company; the Metropolitan Gas-light Company, I was invited to appraise their property by Mr. Zollikoffer, who was then president of that company.

Q. Are those the only three companies whose properties you appraised?

A. I revised the appraisement of the Municipal and the Knickerbocker; the Harlem I did not, nor the Mutual.

Q. Who invited you to appraise the Knickerbocker?

A. Mr. Gawtrey and Mr. Francklyn, I think.

Q. When you revised the appraisements what did you do?

A. The estimates were made when I was abroad. When I came home the Knickerbocker and the Municipal appraisements were submitted to me.

Q. When submitted to you whose direction was upon them?

A. Nobody's.

8818 Q. Whose handwriting was upon them?

A. I couldn't tell you.

Q. Have you seen those appraisements since?

A. No, sir. In the case of the Municipal and Knickerbocker—in those appraisements were the papers upon which I appended my statement.

Q. How particular were you when you revised that list—did you see all the properties yourself?

A. No, sir, not at that time. Taking the amounts and in making the appraisements in any case I was more familiar with them than any other person, especially the Municipal and Knickerbocker; I had rebuilt the New York, which had been a gas company almost five or six years; I commenced in 1867 to rebuild the New York Company; commenced in May, I think, worked at it almost every year until 1883.

Q. State generally what it was that you did in that respect?

A. I have built all the gas holders which they now have, taking down a number of old ones which were almost worn out; I built a building which was 200 feet wide, and about 600 feet long, in which was all their plant for making coal gas. I built them coal storage buildings whose capacity was about 60,000 tons, and which cost about $200,000; I built them new purifying houses, new condenser houses; and perhaps five years ago I took a contract to change their works from coal gas making works to water gas producing works.

Q. Go on and tell what you did under that contract to change from the facilities to make from coal to water gas?

A. It necessitated the raising of one building which had been formerly used as a coke shed, and putting a roof upon it; the building was about 70 feet wide and 200 feet long; within that build-

8819 ing I erected ten gasogenes, or stoves, where the anthracite coal is put under a process for the purpose of decomposing

water; I erected sixteen benches for the gasification of the naphtha; I provided storage capacity for, I think, 200,000 gallons of naphtha, and I put in the necessary pumps for unloading this naphtha at the dock and depositing it into the tanks, and also the pump apparatus to take it from the tanks and put it into the works where it is gasified.

Q. That was completed when?

A. I think in the spring of 1880; it might have been 1879.

Q. Prior to that time what was the capacity of the New York Company's works for producing coal gas?

A. At a maximum it would be 2,750,000 cubic feet per day, prior to the time it was changed to water gas.

Q. After it had been changed by you so as to produce water gas what, in your opinion, was its fair working capacity?

A. Three millions and a half cubic feet per day; but I afterward made an addition which made it more powerful.

Q. When was that?

A. I should say two years ago.

Q. That increased its capacity to deliver water gas?

A. Yes, sir.

Q. And in doing so you dispensed with a part of the plant which had been used for producing coal gas?

A. Yes, sir.

Q. Is not it true when works are changed from the manufacture of coal gas to the manufacture of water gas that a part of the plant thereby becomes useless?

A. It is pretty near true; it would not be advisable, although it is possible, to use all the old plant in the coal gas works; it is better to dispense with the benches which they use in making coal gas.

Q. What other part of the plant besides the benches thus
8820 becomes useless?

A. That is all.

Q. In the spring of 1884 what was, in your opinion, the fair working capacity of the New York works?

A. Four million cubic feet of gas per day; that was an easy working capacity.

Q. Suppose you were to make an estimate of the value of the benches that, having been used in the manufacture of coal gas, had become comparatively useless when the manufacture of water gas was commenced; how, in your opinion, could the value of those benches be estimated, if they had any value?

A. Without any idea of their using them again? The value of property of that character is very variable, depending entirely upon circumstances.

Q. Those circumstances being the use of those benches?

A. Not necessarily the use, but perhaps the moral effect of the abandoned benches.

Q. After 1882 had those disused benches any value at all?

A. Yes, sir.

Q. How could such value, in your opinion, be estimated; what is the method of estimating such a value?

A. One way is to find out what the cost would be to produce them

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Q. That would be the best way?
A. Yes, sir.
Q. Would not you bring in then an element of depreciation since the cost?
A. Yes, sir.
Q. What would be a fair element of depreciation; take the case of the New York; where the benches had been used in manufacturing coal gas?
A. In the New York case the benches are in just as good order as when they were built, with the exception of the retorts; their displacement would cost about $360 a bench.
Q. I understood you a few moments ago to say that they were pretty nearly worn out?
A. The retorts were, but not the benches.
8821 Q. What would you strike off from the cost by way of depreciation?
A. I could not tell without referring to my books.
Q. What is the life of the benches?
A. Some go down in four months and some not in four years.
Q. What, in your opinion, is a fair percentage of depreciation to be considered in arriving at the present value of benches of that character, and to be taken from their original cost?
A. I think that twenty per cent. of the cost of a new bench, to take the benches of the New York Company, would put them in thorough order.

(By the CHAIRMAN:)

Q. When were the old benches displaced and new ones put in?
A. They were never displaced and new ones put in that position.

(By the CHAIRMAN:)

Q. Why were new benches substituted in place of the old ones?
A. 1880, for the purpose of gasifying naphtha.
Q. Was there any use for the old benches while using the new benches?
A. No, sir.
Q. Why did you substitute new benches for the old ones?
A. One reason was we were obliged to use the old benches, and could not throw them out of use until we got the water gas plant under way.
Q. What was the end in view in making the new benches?
A. To produce a different character of gas, and to produce a better gas.
Q. That is, to produce gas according to a better process?
A. Yes, sir; that was supposed to be the object.
Q. Then the new bench, in practical effect, took the place of the old bench, when the new bench was completed?
A. No, sir.
Q. Did not the new take the place of the old?
A. No; they did not produce the same result.
8822 Q. After the new benches were completed did the company use the old benches at all?
A. No, sir.

Q. Have they used them since?

A. No, sir.

Q. Then the object of changing the benches was to introduce a better method in place of the old method in manufacturing gas?

A. Yes, sir.

Q. And since that took place the old benches have been practically abandoned?

A. Yes, sir; excepting for their moral worth; the new benches played but a small part in the manufacture of gas.

(By Senator ROBINSON:)

Q. What do you mean by the moral worth of these old benches?

A. It is not well, perhaps, to use that word; I will withdraw the word "moral;" the naphtha which is used by the New York Gas-light Company is sold by one large corporation, and only one; if the New York Gas-light companies were kept in a condition whereby a small expenditure would enable them to sell either coal or water gas, as they elected, the moral effect upon the Standard Oil Company, it would be a check upon them.

Q. You mean that was so in 1880?

A. Yes, sir.

Q. Is it so now?

A. Yes, sir.

Q. In 1880, when this change was made, there had been a short time before successfully introduced in New York water gas which was supplied by the Municipal company, and which was in active competition?

A. Yes, sir; which would have been in competition with the New York Gas Company.

Q. They would have had to change their plant so as to manufacture water gas?

A. I don't know anything about that; I know they did change, and the Manhattan did not change.

Q. The Manhattan has facilities for producing water gas?

A. No, sir.

8823 Q. At the time you made the appraisement?

A. No, sir.

Q. As a matter of opinion, is there any other element in a gas plant besides the benches that is made comparatively useless when the plant has been used in the manufacture of coal gas, and is about to be directed for the manufacture of water gas?

A. I know of nothing unless it may be in the matter of coal storage, but so far as the plant, there is no other.

Q. Is it not true that the least storage room is required for coal?

A. Yes, sir.

Q. What is the proportion of coal, comparatively, that is used?

A. I couldn't tell you; I know only the general fact; anthracite coal is more readily obtained; they get it every few days.

Q. Does it require any more space to produce a given quantity of water gas?

A. No, sir.

The CHAIRMAN: And less for storage?

Mr. TREMAIN: Yes.

Q. What, in your opinion, is a fair method of estimating the value of a gas plant at the present day, irrespective of the value of real estate or lots without any buildings upon them?

A. I think its value is that sum of money to-day which it would cost to produce it.

Q. To duplicate it?

A. Yes, sir.

(By the CHAIRMAN:)

Q. Supposing one-half of the plant, by the introduction of a better method of producing gas, had become practically useless and had been abandoned, would you say that the fair value of that plant is the cost of producing it?

A. If the plant had been abandoned I should say it was worth simply the price of the old material; and in the case of the New York Gas-light Company's benches, it had simply been put out of commission, and I should say it was worth what it would cost to produce them.

8824 Q. What do you mean by out of commission?

A. I mean not using; I would rate a depreciation of it at twenty per cent.

Q. Has the new method of producing gas proved to be better than the old method?

A. I could not answer that question?

Q. Have you any reason to believe the expectation that it would be better has not been realized by the public?

A. No, sir.

Q. Some of the presidents testified in the last examination that it was better?

A. My opinion is that it is very much better.

Q. You think the new method is a great improvement on the old method?

A. Yes, sir.

(By Senator MURPHY:)

Q. Because of its cheapness in manufacturing?

A. Not so in that, but on account of its greater power of brilliancy.

Q. You say that the fair method of estimating the value of a gas plant is the cost to duplicate it?

A. Yes, sir, at present.

Q. I want to follow that along and ask you your opinion whether by duplicating it you did not mean the duplication of a plant of equivalent working capacity with a less expenditure?

A. Well, no; I mean it would be possible to produce a plant worth half the money, which in the estimation of some people would be the equivalent, but not in the estimation of others; I mean to reproduce that thing as it existed.

Q. Whether it is not, in your opinion, a fair method of estimating the value of a gas plant, irrespective of the cost of the lots and real estate; is it not a fair method of estimating the value of a gas plant to value it according to its producing capacity?

A. I don't know what you mean; any thing is fair that gentlemen agree to; it is not a professional way of doing it; as an engineer I say no.

8825 Q. Have you had any experience in arriving at the commercial value of a gas plant?

A. Yes, sir, I am a builder.

Q. Do you say that it is not in any sense fair to estimate the value of a gas plant by estimating it according to its producing capacity?

A. I say it is not fair to do that thing from an engineering standpoint; it seems not to be fair to me from a commercial standpoint; do I understand your question that the gas producing power is the value?

Q. Yes; is not that one element in measuring its value under any circumstances?

A. Yes, sir.

Q. In your opinion is there any other element to measure the commercial value of a gas plant?

A. I suppose it would boil down to the same thing—its ability to make money.

Q. Now, upon what basis did you make an estimate of the valuation of the Manhattan property, for instance, that you had appraised, taking, to begin with, the gas plant of the Manhattan?

A. Well, we measured the buildings; we found out how many brick there were in the buildings to produce them; we found out how many piles were under the buildings; and in that general way we endeavored to find out all the material in those buildings, and estimated that at about the price it would cost to-day to put those buildings up.

(By Senator MURPHY:)

Q. Did you make your estimate of the price it would cost to put up those buildings to-day, based on the price it would cost when they were built?

A. Yes, the present cost.

Q. You say you estimated the brick and piles and material with regard to what you thought it would cost to do it to-day?

A. Yes, sir.

Q. Was there any comparison made as to the cost at the time they were built, and what it would cost to build them to-day?

A. No, sir.

8826 (By Mr. TREMAIN:)

Q. Is it not true that the cost of erecting a gas plant to-day is very much less than it was twenty years ago?

A. I couldn't tell you.

Q. Is not that true?

A. It is not true that the same character of work can be produced very much cheaper to-day than twenty years ago.

Q. An old-fashioned plant you mean?

A. No, sir, I do not mean that.

Q. Can the old-fashioned plant be made cheaper?

A. No, sir, only a different character and poorer; some parties

would charge double what others would; some people think that because the more money is expended and the more durably built, the cheaper in the end.

Q. Is not it a fact that the same thing to build now costs less than it did twenty years ago?

A. No, sir, I am getting more now.

Q. Is it not true you can manufacture a plant for much less to-day than it did twenty years ago?

A. I don't know.

Q. You do know it would not cost any more now than twenty years ago?

A. No, sir, I think not.

Q. With reference to the Manhattan, who participated in the appraisement?

A. My son, Mr. Hill, Charles H. Corbett, William Deming, Charles Rowland, Mr. Trautwein; these gentlemen are all engineers; I also had clerical help in my office.

Q. Who from the Manhattan Company?

A. Nobody.

Q. Who handed you the schedule?

A. Albert M. Smith.

Senator MURPHY: I move that when those books are brought here they be retained in the possession of the committee until we get through with them.

8827 (A vote was taken and the committee were unanimously in favor of the motion.)

Q. Who handed you the schedules?

A. Mr. Smith gave me the schedules of the Manhattan.

Q. These other papers being marked "B 1," "B 2," and "B 3?"

A. No, sir.

Q. What did you do with the papers he handed out?

A. He handed me a schedule of the property; I had copy made, I think, and gave it back to him.

Q. Did you write any thing upon it before giving it back to him?

A. No, sir.

Q. Did you make a copy of it?

A. This is a copy of it; substantially a copy.

Q. Did you make this copy?

A. No, sir; my clerk made it; it was made under my directions; this is my handwriting on that (witness indicating).

Q. Are those the ones you gave back to Smith?

A. No, sir; the one I gave back to Smith was the one he gave me.

Q. Did not the schedules he handed you have some figures upon it of dollars and cents?

A. No, sir; I never got the slightest idea of valuation from him of the Manhattan Company; I know of my own knowledge its value; and that is true of the Knickerbocker and the Municipal; I had no intimation whatever of the Metropolitan Company, as to the supposed value of their property.

Q. You appraised the real estate?

A. No, sir; not of any of the companies.

Q. I observe your appraisement of the mains and meters and services?

A. No, sir; I know nothing about them; I never was invited to appraise them.

Q. Your appraisement in all the companies is limited to the gas plant?

A. Yes, sir.

8828 Q. The buildings are considered a part of the gas plant; will you please state to the committee what, in your opinion, are the items comprising a gas plant proper?

A. I think all the apparatus necessary for the production of gas; I think the buildings which covered it are a portion of the plant; I think the buildings in which are stored the raw material may be considered a portion of the plant; and also the storage holders for the finished material; the office buildings and apparatus used for keeping a record of the works we have never considered as a part of the plant; we call it a betterment or office, and I have so described it here, I believe.

Mr. TREMAIN: Witness reads from Exhibit "B." "The foregoing $1,916,355, setting forth the present value of the buildings, as a gas producing and gas storage plant, coal storage, fixtures, tools, implements and betterments of every description * * * comprising the property of the Manhattan Gas-light Company, known as the Eighteenth street station, has been carefully revised and corrected by me, and I believe the same to be a just and true value therof."

Q. Is that appraisement you made of the Manhattan Company's property, irrespective of, and without the knowledge of their cost?

A. Yes, sir.

Q. The cost it would take to put it there at that time?

A. Yes, sir.

Q. When you made that estimate did you take into consideration the difference between these old works and new works?

A. Yes, sir; they were not new.

Q. Did you estimate what it would take to put a new building there?

A. Yes, sir.

Q. Was there any new apparatus in the Manhattan at all?

8829 A. That is a relative term; some apparatus twenty-five years' old there was there, and other not more than five or ten years.

Q. Was all the apparatus of the Manhattan in use?

A. No, sir; not when we were there.

Q. What part of the Manhattan plant was not in use when you were there?

A. Some of the benches; we were there in the summer, and I suppose not half of the apparatus was in use which is necessary to run in the winter.

Q. Was there any part of the Manhattan that you saw which was not in use during the year?

A. I couldn't tell you.

Q. Did not you see some things on the schedule of the Manhattan plant which were in fact comparatively useless?
A. I saw nothing on the schedule which was not useful.
Q. Do you know how the value of the mains, meters and services were arrived at?
A. No, sir.
Q. Are you a director of any gas-light company?
A. One in Florida.
Q. In Brooklyn?
A. No, sir.
Q. Are you a stockholder in any of the companies?
A. In the Consolidated, and no other.
Q. How long was you in the Municipal?
A. I was one of the original promoters who built that works; always in it.
Q. When did you build the Municipal and the Knickerbocker works?
A. I built two gas works for the Municipal Company; the first one in 1876.
Q. Where?
A. On the block bounded by the North river and Forty-sixth street, and by property on the east—I don't know whose, and by Forty-fifth street on the south; that works was of a half a million cubic feet daily capacity.
Q. For water gas?
A. Yes, sir; in 1877 I built the works for the same com-
8830 pany in the next block south, bounded by the North river, Forty-fourth and Forty-fifth streets.
Q. What capacity were they?
A. The buildings were large enough for three million cubic feet daily capacity; the apparatus for a one and a half million one was put in; subsequently another million and a half was added.
Q. Making a capacity of three millions?
A. Yes, sir.
Q. From and after what time?
A. The spring of 1880.
Q. Each of these constructions under a contract?
A. Yes, sir; a number of contracts, I think.
Q. All payable in stock?
A. No, sir; not a dollar payable in stock; I never made a contract with a company in the city of New York whereby I ever received a dollar's worth of stock to my recollection.
Q. Bonds?
A. I have received bonds in one case.
Q. Which case?
A. The Municipal.
Q. Which year?
A. I think 1878, when the final payment was due.
Q. That is all the work which you have done for the Municipal?
A. That is all I did for them there; I built the Knickerbocker works as well.
Q. You had completed these other contracts for producing this

capacity of three and a half millions before you entered upon the Knickerbocker?

A. No, sir.

Q. When did you enter upon the Knickerbocker construction?

A. I partially built it in 1871.

Q. What was its capacity in 1871?

A. No capacity, for the reason the enterprise failed; the work was stopped and the property sold to other parties.

Q. Do you remember whom it was sold to?

A. Yes, sir.

8831 Q. Whom?

A. I think the Cutting estate had a hand in the purchase of it; I have no knowledge only by hearsay.

By the CHAIRMAN:

Q. You understood it was purchased by the Cutting estate?

A. Yes, sir; that is all I know about it.

Q. This was where?

A. Ninety-eighth and Ninety-ninth streets, Second avenue to the river.

Q. What was done at that time when the work was abandoned?

A. I had filled the property in two feet above high-water mark; I built a retort-house, two tanks, I built a condenser, a purifying-house and one set of purifiers, a meter-house, and I put in a meter; and after having done that the payments were stopped; and they made a compromise with me and I abandoned the work.

Q. About what time was that?

A. I think that all occurred in 1871.

Q. Please tell the total amount that was paid you, as near as you can recollect?

A. I said I never made a contract in the city of New York and took stock; that is not true; I made a contract to take the land at Ninety-eighth street, and put thereon a gas producing works, coal gas, which should be capable of making a million feet of gas a day; and my price in stock was $1.150,000; I had a contract with one of the gentlemen of the company, whereby he agreed to give me fifty cents on a dollar for every share of stock which I would deliver to him, and my object, of course, was to sell him the whole of it and get the cash for my work, $575,000, the cash valuation; the scheme failed, he became financially embarrassed, and did not take all the stock which I got.

Q. Now those contracts were in writing.

A. Yes, sir.

Q. You have that contract with the Knickerbocker Com-

8832 pany?

A. No, sir; there was no Knickerbocker Company at that time.

Q. With whom did you have that contract?

A. Henry J. Davidson; he took the contract from the company, and I took it from him.

Q. The Knickerbocker was started under a different name?

A. Yes, sir.

Q. What was the name?
A. The Union Gas-light Company.
Q. Who was this gentleman with whom you entered into the contract to purchase some stock?
A. C. S. Bushnell, of New Haven.
Q. He failed?
A. Yes, sir; he was to take my stock, and did take a portion of it, but failed.
Q. With whom was the compromise made that you speak of?
A. I think it was with Davidson; the name of the company was then the Union Gas-light Company of New York, I think.
Q. Do you know at that time whether any bonds had been issued by the Union Gas-light Company?
A. No, sir; I do not know.
Q. Did you surrender the stock back when the compromise was made?
A. No, sir; I think I have some of the stock yet; the company was defunct.
Q. What became of the property?
A. It was sold, as I understood it.
Q. By Davidson?
A. No, sir.
Q. It was sold to whom?
A. By hearsay; to Mr. Cutting.
Q. R. F. Cutting?
A. So I understood, but I don't know any thing about it.
Q. Did you subsequently do some more work on that property?
A. Yes, sir.
Q. When did that begin?
A. Eighteen hundred and seventy-seven; I would not swear exactly to that date; perhaps it was 1878; I made a contract with the Municipal Company of New York, or rather with the president, Mr. Charles G. Francklyn.

8833 Q. Have you that contract?
A. I have it at home, but not with me.
Q. You have no objection to submitting it to the committee?
A. No, sir; I will do so.
Q. In pursuance of that contract, what did you do?
A. I took this establishment which had been turned into another gas works since I first built it, and built over.
Q. What was the producing capacity?
A. Not over 400,000 cubic feet a day, I should judge.
Q. Under the control of the Municipal?
A. No, sir; it was being run by Mr. McKenzie when the Municipal purchased it; he had an apparatus in that place making gas for the Knickerbocker.
Q. Was Mr. Francklyn an officer of the Knickerbocker at that time?
A. No, sir.
Q. Who were the officers?
A. The president, R. N. Graham, and secretary, John Sickles.
Q. Was that contract to be paid for in stock, bonds or cash?

A. Cash; and it was paid by the Municipal in cash.
Q. What was the total cash amount?
A. Between $400,000 and $500,000.
Q. And that payment was made in 1878 or 1879—the last payment?
A. Yes, sir; it was made as the work progressed—made in installments—the last payment was made when the work was completed.
Q. What did you do at that time, and how were the works when you stopped your work and got your pay?
A. I put up a new gas-holder for the storage of illuminating gas, of about 300,000 cubic feet capacity; and I erected a gas-holder for the storage of water gas and apparatus which is necessary for
8834 that process; and put up a building about sixty feet wide and about seventy-five feet long, with an iron roof—a fire-proof building—I put in then six gasogenes or stoves for making water gas; I put in two steam engines for producing heat in the stoves; two others to operate the exhausters; and machines necessary to move the gas through the works'-pumps; I put in a new set of purifiers, new scrubbers; I furnished about 400 horse power boilers; I think there were five of them; I built a complete range of benches, twenty-eight, if I remember right, and generally put the works in a good condition for the production of gas; my contract was to produce 2,000,000 feet per day—the last transaction; at that time the producing capacity had not been tested up to over two million because they had not the storage capacity—they had no place to put the gas.
Q. Did you build a holder subsequently?
A. Yes, sir; two years ago; I took out two holders which I had previously built some ten years ago; the tanks were leaking, and I put the tanks in thorough order and made them deeper; I put in a three-lift holder instead of two lift ones, making a difference of fifty per cent. in storage capacity; since that time they have produced 2,400,000 feet in twenty-four hours.
Q. What, in your opinion, was their proper fair producing capacity in 1882?
A. Two million cubic feet.
Q. It would not exceed that under any circumstances—a fair use of the works?
A. No, sir.
Q. Was that a fair condition of the works in 1884?
A. No, sir; I took down two gas-holders; their producing capacity is measured by their ability to take care of the product.
Q. In 1884 what was their producing capacity?
A. Two million four hundred thousand feet per day.
8835 Q. Was it being used at that time for that amount?
A. I think not at that time.
Q. Is it not true that the plant was not used for producing at that time?
A. When I appraised it, it was at work, in 1884.
Q. What is the total amount that you received for work on those Knickerbocker works up to the time of the appraisement?
A. I couldn't tell you here; I can tell you to-morrow.

Q. Please do so. It was less than a million, was it not?
A. No, sir, more than a million.
Q. Your recollection?
A. My recollection is that I have received over a million dollars since I commenced to build upon that property.
Q. Is it, or not, the fact when you appraised these works in 1884, any part of them that you had previously constructed had been abandoned or removed besides these two holders you have referred to?
A. Nothing else.
Q. Was any part of the plant then useless?
A. No, sir; the gas companies never use precisely the same plant in two consecutive months' work; in the summer they do not use it all, but in the winter they are using all of their plant.
Q. When did you see those works after the time you appraised them?
A. The other day when I was up to see the explosion—Hell Gate explosion; I think it was the tenth of October.
Q. Is there any period during the past year when that plant has not been used?
A. No, sir.
Q. Was there any time that the gas was made elsewhere and conveyed to the Knickerbocker holder?
A. Yes, sir.
Q. When?
A. I should say in 1881, from the time the Municipal Company bought it, until two years ago.
Q. Where was the gas made?
A. At the Municipal gas works.
8836 Q. And conveyed to the holders of the Knickerbocker?
A. Yes, sir.
Q. And stored there, and dealt out from there?
A. Yes, sir.
Q. That was the condition when you commenced to work there in 1882?
A. Yes, sir, and remained so until 1883.
Q. Now did you do any other work for the Municipal except those two works?
A. No, sir, I think not; I don't remember any thing else.
Q. When you went to the Knickerbocker works to appraise them in 1884, had there been any other work of any extent done there except the work which you had constructed?
A. The company had built an office; I don't know whether I appraised it or not; I couldn't say without looking; I did not appraise the Knickerbocker works, but simply revised them.
Q. Did you se- the works?
A. Yes, sir.
Q. If there had been any other work done at that time except your work, what was it?
A. They had built this office and the coal storage shed, and I think something in the way of improving their dock, but what I couldn't say.
Q. That is all you observed?

A. Yes, sir, except what I did.
Q. The coal-sheds—were they very expensive?
A. It is a brick building with the roof having a railroad track and cars on top for depositing the coal.
Q. You saw the Municipal works some time during 1884?
A. Yes, sir.
Q. Had there been any work except yours done there?
A. Yes, sir; considerable building.
Q. What building had they done that you did not yourself construct in the works?
A. They built a very large gas-holder tank.
8837 Q. What other work?
A. Coal-sheds.
Q. What other work?
A. I don't know of any thing.
Q. The apparatus was substantially your construction?
A. Yes, sir; they built the dock.
Q. So far as the apparatus was concerned it was yours?
A. Yes, sir, I built the gas-holder, but not the gas-holder tank.
Q. Who built it?
A. Armstrong & Moran.
Q. Did you estimate its value?
A. No, sir.
Q. You included an estimate of its value when you revised it?
A. Yes, sir; I estimated its value at the time the appraisement was submitted to me.
Q. Who submitted the Municipal appraisement to you?
A. Mr. Gawtry, and I think Mr. Allen was in the room; I was sent for.
Q. When was it you were sent for?
A. I think it was in October.
Q. When you got there who did you see?
A. Mr. Gawtry and Mr. Allen.
Q. What did Mr. Gawtry tell you he wanted you to do?
A. To look it over and see if it was all right.
Q. The paper he submitted to you was a different paper from the one in the book?
A. I think it was in sheet form.
Q. Were there any figures on the paper?
A. Yes, sir.
Q. What did those figures relate to?
A. The value of the article they were set opposite.
Q. What were they explained to you to represent?
A. Nothing; they represented the value of the property.
Q. How do you know that?
A. Because I made it, the property, and received the money; I was in Europe at the time this appraisal was made; Mr.
8838 Gawtry was in my office, and probably got some of the information from my books.
Q. Did you write the values on that schedule?
A. Yes, sir.

Q. Were they different from the schedule which was submitted to you?

A. No, sir, I think not.

Q. Who prepared this one—Exhibit "D" relating to the Municipal?

A. I did; that is my handwriting.

Q. And Exhibit "E" also?

A. Yes, sir.

Q. Who prepared those books?

A. Those books were prepared in the office of the Municipal Company; I don't know who prepared them.

Q. Those figures you went over to see if they corresponded with those lists?

A. Yes, sir; and then I wrote that statement on here; this was on September 8th; I came home from Europe the last of August; I will correct it and make it September instead of October.

Q. You did not appraise any piers or bulkheads, the real estate of the Municipal or Knickerbocker?

A. No, sir.

Q. Nor any thing else except the gas plant; was any part of the Municipal structure changed at any time from a coal plant to a water plant?

A. No, sir; it was always a water gas plant, it was constructed so originally; when the Knickerbocker was originally designed it was proposed to use coal in the production of gas. After it was sold, and Mr. McKenzie became the engineer, he used a part coal and a part water gas, mixed in the two; it has never been any thing else but a water gas works under its present ownership.

Q. Or under the Municipal ownership?

A. Yes, sir.

Q. How much of the benches became comparatively useless by that change?

8839 A. None; there never were any benches constructed until I constructed them for the water gas in 1878.

Q. When did those works begin to produce gas—the Knickerbocker works—do you know?

A. No, sir.

Q. You think they produced gas in 1878?

A. Yes, sir.

Q. Did you build the Metropolitan?

A. No, sir.

Q. Did you estimate its value?

A. Yes, sir.

Q. Did you estimate the values of the Metropolitan properties upon the same basis which you have described, in which you estimated the others?

A. I tried to, yes, sir.

Q. You did not include the real estate, or piers, or bulk-heads?

A. No, sir.

Q. What was the producing capacity of the Metropolitan works when you made the valuation?

A. I don't know.

Q. Who submitted to you the list for that appraisal?
A. Mr. Zollikoffer, and the man who had charge of the Forty-second street gas works.
Q. Did these schedules have any figures on them at the time they were submitted to you?
A. No, sir.
Q. You were not made acquainted with the costs?
A. No, sir.
Q. You valued them irrespective of the costs?
A. Yes, sir.
Q. Did you observe any plant there that was useless?
A. No, sir, but lots of it out of commission, or use.
Q. Had the plant been used to make coal gas before?
A. Yes, sir.
Q. When was the change made?
A. No change has been made, to my knowledge; they simply used a little oil in four benches that was intended for use in making gas; the engineer's name which I could not think of was Streiker.

8840 Q. What did you do with the original papers that the Metropolitan representatives submitted to you?
A. The inventory I returned.
Q. Did you make a statement to the Metropolitan?
A. Yes, sir.
Q. Did you make any other statement to the Metropolitan except the one I have shown you?
A. No, sir; I made an explanation to Mr. Zollikoffer; he thought I had not valued his property high enough; I convinced him.
Q. What did you say to him?
A. I couldn't tell you; I wrote a letter to him on that subject in answer to his letter.
Q. Have you a copy of the letter?
A. Yes, sir; at home.
Q. What was your information in respect to the figures?

(By the CHAIRMAN:)

Q. You will produce that letter, will you?
A. Yes, sir.
Q. I show you Exhibit "C 1," and it is produced by Mr. Smith as being the schedule of appraisement of the property of the Metropolitan Company that entered into the consolidation; I suppose it was your appraisement; I want you to look at it; did you ever see it before?
A. I have seen a copy; this is a copy evidently of what was submitted to me, with no figures attached to mine.
Q. What did you do?
A. I put the figures in; the valuation of every item.
Q. Is this Exhibit "C" also in your handwriting?
A. No, sir; I never saw it before.
Q. Is there any certificate of yours in that book?
A. I don't know.

Q. Had you signed a certificate in form the same as signed for the Municipal?

A. Yes, sir.

Q. Please turn in that book to the items which you did appraise, and state the class of items?

A. Store-room, 18x52 feet.

8841 Q. State from where you commenced to appraise, and where you ended?

A. On page 36.

Q. And appraised all the items down to and including what page?

A. I don't want to say that this is a true copy of what I had, but I think it is.

Q. Do you remember the figures of your appraisement?

A. No, sir.

Q. Do you remember the total at which you appraised the plant of the Municipal?

A. I do not; if I can refresh my memory in some way.

Q. Let me suggest the figures; $2,041,000, or about that?

A. No, sir; that is doubtless inclusive of something I did not appraise.

Q. Wherever we find your certificate, then those are your figures?

A. Yes, sir.

Recess until three o'clock.

MONDAY, *November* 23, 1885, 3 p. m.

Examination of Mr. ROWLAND resumed:

Q. What was the subject-matter of difference between yourself and Mr. Zollikoffer, touching the valuation of his company's property?

A. My recollection is there were some few items which he thought I had undervalued.

Q. Of what character?

A. I don't remember what the items were; I objected to altering the valuations which I had given him unless I was authorized to revise all the valuations; and the explanation which I gave him by letter, he wrote me was satisfactory.

Q. Why was it necessary to revise them all in case you revised his figures in that respect?

A. I had delivered them all and I did not think it was right in the sight of the other parties to make a different valuation without having the opportunity to look over the valuations of the other companies.

8842 Q. Have you arrived at the valuations in all cases on the same basis?

A. Yes, sir.

Q. And that basis was on the basis you have already stated?

A. Yes, sir.

Q. In respect to the depreciation of the gas plant, what, in your opinion, is the fair average life of a gas retort?

A. Two years.

Q. And the fair average life of the other apparatus constituting the gas plant?

A. I have no opinion about that, sir; as in my experience of about eighteen years I don't remember any plant having been worn out; in many cases we have taken out but replaced it by a larger one, and in some cases it has proved more effectual.

Q. Taken what out?

A. Gas-holders, condensers and purifiers.

Q. When you take out a gas-holder and put in another one, what do you do?

A. Take it down and rework the iron and sell it to some other company as a new one.

Q. When you take it down has it any value for some other building?

A. No, sir; only to work over; and it requires the expenditure of cleaning the sheets, putting them up, and re-riveting them.

Q. In your opinion is there any depreciation in the value of mains and pipes after they have lain for years?

A. There must be a depreciation as all things wear out; but I cannot conceive how long it would take to wear out a set of mains; I have seen mains replaced by new ones, which have been in the ground for thirty years, and just as good as those replaced.

Q. Is not there a constant wear, especially at the joints?

A. No, sir.

Q. Is not that your experience in this city?

A. No, sir; I think this is the best pipe city in America.

8843 Q. How would you arrive at the value of mains and pipes that have been laid for some years?

A. By estimating the cost of reproducing.

Q. At the time of the estimation?

A. Yes, sir.

Q. That means the gas-mains themselves, and the cost of laying them and opening the streets for that purpose?

A. Yes, sir.

Q. The material of which the mains are made is what?

A. Cast iron entirely in New York.

Q. In that respect the mains would cost more than they would thirty years ago?

A. The cost of mains varies every year; iron is not as low as it was thirty years ago.

Q. The iron of the Manhattan system would cost more than it would fifteen or twenty years earlier to lay it?

A. Yes, sir, the cost of laying the mains now I think would be much larger than it was fifteen years ago.

Q. In what respect?

A. Because labor is very much higher.

Q. For laborers in the street?

A. Yes, sir.

Q. Skilled labor higher?

A. Yes, sir, higher than it was fifteen years ago.

Q. Yes?

A. Fifteen years ago I paid $2 a day for a first-class machinist, and he was thoroughly educated in his business.

Q. The labor required in laying mains, I am speaking about?

A. It requires a man who is rather more skilled than an ordinary laborer, and I think that that character of labor is from thirty to fifty per cent. higher than it was fifteen years ago.

Q. Look at that a moment; what would a laborer employed in excavations in mains receive in 1884, and prior to that time?

A. The difference between $1 and $1.50.

Q. An apprentice—such partially skilled labor as is employed?

A. In about the same ratio.

8844 (By Senator ROBINSON:)

Q. Have you any pay-rolls you had fifteen years ago?

A. Yes, sir.

(By Senator MURPHY:)

Q. You made the remark a moment ago that you employed thoroughly skilled machinists at $2 a day; such a man is capable of building a steam engine, and running it after it is built; do you mean to say that such a man you employed at $2 a day fifteen years ago?

A. No, sir; he may be a thoroughly skilled machinist, but not competent to run an engine.

(By the same:)

Q. A flange turner you might classify as a machinist?

A. No, sir, we do not class him as such; he is simply a flange turner, and nothing else.

Q. Have you ever been informed what the difference is between your appraised value of the plant of the Manhattan values and its actual cost?

A. I have never had the slightest intimation given me.

Q. That circumstance would have no weight in forming your opinion?

A. It ought to have no weight.

Q. If you are now informed what that cost was would it change the opinion you have already given?

A. I think not, sir.

Q. As a matter of opinion simply, and in order that the committee may weigh the opinion you have already expressed, I will ask your opinion on a hypothetical case—Whether it would be a fair method of estimate to take the cost of the plant that you have appraised and deduct twenty per cent. from it for wear and tear and depreciation during the time it has been in use since it was purchased?

A. I think it would not be fair, sir.

Q. Would it, in your opinion, be a fair method of estimate to take the cost of such a plant as you saw in the Manhattan and add
8845 twenty per cent. to that cost and thus arrive at its present value—would that be fair?

A. I don't know whether it would be fair or not, as I know nothing of the basis; I know nothing under what conditions this property

was purchased; I think a fair valuation is, that sum of money which it would cost to produce it now, and that sum of money at which it can be sold in the market.

Q. Then are we right in assuming it to be your opinion now that the value of the plant that you appraised of the Manhattan would have brought in the market, if sold, $3,646,403?

A. If that is the sum I appraised it at I think it could be sold for that sum of money; I think that I could furnish a purchaser on condition that the balance of the property can be purchased at as fair a valuation.

Q. You mean by that the real estate?

A. Yes, sir; and their system of mains.

Q. Their mains, services, real estate—and that is all you mean?

A. No, sir; I mean their privileges—their right to open the streets, if they have any, and their right to do business.

Q. You regard those as an element in the valuation?

A. Yes, sir.

Q. Suppose you included that and their right, or assumed right, to furnish the New York community with gas—would the exclusion of those elements make any difference, in your opinion, and your figures?

A. I cannot conceive that the property is worth any thing except what it is worth for old material, under this condition unless applicable for the purpose for which it was built.

Q. So that you include in all the estimates you have made, and in the figures in evidence over your signature, the conditions of doing business in the city of New York—the right to open the streets
8846 for that purpose and supplying the community with gas, as an element for the valuation of that property?

A. No, sir; that is my valuation of that property for the production of gas in the manner which it was used at the time I made the appraisal.

Q. And for each respective company?

A. Yes, sir.

Q. That includes its right to lay pipes and operate them and all that?

A. That is of no use except to have the right to open the streets.

(By Senator ROBINSON:)

Q. You didn't take into account what it would cost to lay a main of the same kind through the streets only?

A. No, sir; I estimated what the apparatus was worth to that company who were using them at the time.

(By the same:)

Q. And that would depend upon how much money the company is making out of the business?

A. I don't know that.

Q. I find here many items upon which I would like to ask you whether they could not be duplicated for less money; for instance, for the retort house, etc., $6,124?

A. Yes, sir; the Manhattan Gas-Light Company—I believe that

that was a fair valuation of that property at that time; what may be there now I am not familiar with.

Q. Could not that item be duplicated for less than that sum?

A. I think not.

Q. Here is an item—purifying apparatus, elevator, eight purifiers, etc., $59,084?

A. That is for two sets.

Q. Have they no valuation except for the purpose of supplying gas?

A. No, sir; only their weight in old iron.

Q. Your valuation included that?

A. Yes, sir; for purifying gas.

Q. Gas-holder tanks, etc., $198,000?

A. A number of tanks.

8847 Q. 1, 2, 3, 4, 5, and 6, $198,000—you can answer the same as to that?

A. Yes, sir.

Q. Then these gas-holders, purifiers, $198,000, you answer the value is for old iron?

A. I say they have no value except for the purpose of purifying gas; I do not say that in that place they could be sold.

(By Senator ROBINSON:)

Q. So you say it would cost that to duplicate them?

A. Yes, sir; I say that is a fair valuation.

Q. It would cost that to put others in their place?

A. Yes, sir; as good as they are.

Q. I find an item here of $28,444, coal yard No. 2; what does that refer to?

A. An apparatus for taking the coal from the vessel and carrying it along to the yard, and carrying it across the yard, and piling it in the yard; it is quite a complicated piece of machinery; it requires an engine and boiler; it is useful for no other purpose only the storage of coal.

Q. I find a similar item as to coal yard No. 3; I suppose you answer the same as to that?

A. Yes, sir.

Q. I find here item for gas-holders and tanks?

A. Two gas-holders and frames, $52,000.

Q. Those then in use?

A. Yes, sir.

Q. Any gas-holders over there not in use at that time?

A. Not any; they may not have been in use; there was no gas-holder which was not useful for the storage of gas.

Q. Flagging, bridge stone, etc., and iron covered building, how did you arrive at their val-es?

A. Measured them.

Q. On the whole you valued it as a running concern?

A. Yes, sir.

Q. And its capacity to produce gas supply?

A. To produce gas; we did not come to the supply.

8848 Q. With what other works in the city of New York have you had any transaction?

A. No other; oh, the Harlem gas works.

Q. What did you do to the Harlem, and when did you begin?

A. I began there in 1869 or 1870—the winter.

Q. Was that the Harlem Company then?

A. Yes, sir; I built them a gas-holder, and also built them a gas-condenser; in January, 1884, I enlarged their works with another gas-holder, tank and purifying-house, with two sets of purifiers and some new condensers, scrubbers and steam engine, boiler and exhauster; it was in the spring or summer; I think the contract was taken in January.

Q. What was the producing capacity of those works before you commenced there in 1884?

A. I have no idea.

Q. What was the producing capacity when you completed them?

A. I couldn't tell you; John Belmore had charge of these works at that time.

Q. Did you see any of the engineers' reports?

A. No, sir.

Q. The work that you had to do?

A. I saw the report and this engineer recommending this improvement.

Q. Who showed you that?

A. I think Mr. Morse showed it to me.

Q. Did you have any connection with Rutter?

A. No, sir.

Q. What was the total amount of money that covered the improvement of these works in 1884?

A. I couldn't tell you; I was not in the country when that work was done; I can give it to you from my office.

Q. Do you remember when you ceased to work there in 1884?

A. About the 1st of November.

8849 Q. Was that contract in writing?

A. I think so, but I couldn't say; it no doubt was.

Q. And with the Harlem Company?

A. Yes, sir.

Q. What were the Harlem works doing at that time, in 1884, when this work was done?

A. They were manufacturing gas and selling it, I think, in the districts all above Seventy-ninth street.

Q. East and west?

A. Yes, sir; they were in competition with the Knickerbocker gas works, who supplied gas in about the same district.

Q. Had both companies their mains laid?

A. Yes, sir; but the Knickerbocker Company had not so many laid as the Harlem.

Q. Is it not true that they were both supplying on the same streets in 1884?

A. Yes, sir, but in different pipes though.

Q. That was the time when the price was uniform by reason of the pool, which the committee will find in the proceedings, from 1880

until the consolidation; there was a competition price to 1880 which resulted in a pool, and while the companies were competing, yet the price was the same in all the streets?

(By the CHAIRMAN:)

Q. The competition consisted in getting each other's customers?

A. Not only that, but the quarterly statements were made upon a basis established by a stipulated agreement.

Q. So that when you entered upon this work in '84 they were supplying some of them with gas in the main streets?

A. Yes, sir.

Q. Describe the work; what was the territorial area, and what did the Harlem works consist of?

A. I couldn't say; I never was in the works half a dozen times in my life; I have no knowledge of their area; they were located on First avenue and One Hundred and Twelfth street.

8850 Q. Have you been there since the summer of 1884?

A. No, sir.

Q. You don't know whether they have been shut down or not?

A. No, sir.

Q. Did you make any estimate of the Harlem?

A. No, sir; I never was invited to.

Q. Have you any knowledge which is sufficient to enable you to form an opinion as to what was the value of the gas plant of the Harlem in 1884?

A. No, sir, not the slightest.

Q. Did you make any appraisement of the Mutual Company?

A. No, sir.

Q. Have you ever been in their works?

A. No, sir, not in their buildings.

Q. Did you have any transaction in relation to their construction of the Mutual works?

A. No, sir.

Q. And also the Equitable?

A. No, sir.

Q. Did you construct the Nassau works in Brooklyn?

A. Yes, sir, in 1872.

Q. Have you been to work on them since then?

A. No, sir.

Q. Would it be convenient to produce the figures you have referred to to-morrow?

A. Yes, sir.

Mr. TREMAIN: We will dispense with the further examination of Mr. Rowland until that time then.

JAMES W. SMITH, being recalled by the counsel to the committee, testifies as follows:

Examined by Mr. TREMAIN:

Q. Have you brought with you all the balance sheets that you alluded to this morning which have been made by the book-keepers

of the Consolidated Company between November, 1884, and the present time?

A. Yes, sir.

8851 Q. Have you ascertained definitely whether there are any other papers having reference to the financial condition of the company during that time?

A. I think you will find in connection with these balance sheets every thing you will want.

Q. I want to know whether there are any other papers in existence on that subject?

A. There are no other papers to my knowledge.

Q. Is there a finance committee?

A. Yes, sir.

Q. Who comprise it?

A. Percy R. Pyne, Henry Day, John T. Huggins, H. E. Gawtry and the president *ex-officio*.

Q. When was that committee created?

A. At the organization of the company, or shortly after.

Q. The committee has not been changed since the fall of 1884?

A. No, sir.

Q. Has it made reports in writing?

A. Not to my knowledge, except the minutes of such meetings as they have held, which are reported to the board of directors—the monthly board meetings.

Q. Is there a book containing their report?

A. Yes, sir.

Q. Are there any other reports of that finance committee except the record as shown in their minutes?

A. No, sir; the secretary of that committee is the secretary of the company.

Q. Can you send for that book so I could get it this afternoon?

A. I don't think I could; I have no messenger here; if you will send one of your messengers down with me I will try to get it.

Mr. TREMAIN: We will send a messenger for you while you are on the stand.

The WITNESS: If you will wait until morning I will send it.

The CHAIRMAN: We will send down for it.

(By Mr. TREMAIN:)

8852 Q. It is the book of the finance committee; is there any other committee that reports or has reported to the board of directors since last November?

A. I think several matters in relation to the business of the company have been reported.

Q. Designate the members of this committee who have acted?

A. I could not; it is all on the minutes of the board.

Q. Whether there has been a substitution?

A. I think not.

Q. Is there among those papers a paper showing the financial condition of the company during 1884?

A. Eighteen hundred and eighty-five; I think what you want, sir, is here.

Q. I want your testimony whether there is, or is not?

A. I will answer that in the affirmative, sir.

Q. Those papers may as well be handed to the expert. The stock is registered in the Farmers' Loan and Trust Company?

A. Yes, sir.

Q. Is all the stock that has been issued to stockholders of the Consolidated Company a matter of record in the Farmers' Loan and Trust Company?

A. I presume so.

Q. Don't you know?

A. I don't know that I do.

Q. Don't you know whethere it is, or it is not?

A. I don't know but there have been some omissions in their books; it has been sent down to be recorded.

Q. Is it not a fact that some stock has been issued by the Consolidated Company which is held by the owners or held as collaterals, which is not registered in the Farmers' Loan and Trust Company?

A. No, sir.

Q. There is also a record of the same ownership in the office at Irving Place and Fifteenth street?

A. Yes, sir.

8853 Q. Have you still in your custody, or in the custody of the company, the original list of stockholders transmitted to Consolidated Company from the constituent companies at the time of the consolidation?

A. I think we have the original lists.

Q. In what books will they be found to have been entered?

A. Our stock ledger.

Q. In any other books?

A. The stockholders of the constituent companies—there is a book showing the stock in the old companies, and the amount to which they are entitled in the new.

Q. And also the subsequent transfers in the new?

A. Our transfer books will show the result of the transfers.

Q. Will you place those books at the disposal of the expert this afternoon?

A. No, sir.

Q. Will you produce them here to-morrow morning?

A. No, sir; I think the company should be represented by counsel in the matter, and not have demands made upon us for purposes entirely outside of this investigation; I don't see what difference it makes whether John Jones holds one thousand shares or one share; and I would respectfully ask that this company be allowed the privilege to consult with counsel in the matter before any action is taken upon it.

Mr. TREMAIN: The question and answer are suspended and a new question asked. State what committee, if any, of the board have had the direction of the sale of any stock reserved for the working capital of the Consolidated Company since November, 1884?

A. There is no committee.

Q. State what officer?

A. There is no officer.

Q. State what disposition, if any, has been made of any of the stock not issued to the stockholders, recited in those schedules submitted by the constituent companies which you have desig-
8854 nated?

A. The stock is in the custody of the treasurer of the company; all of that stock which you have referred to; it has not been sold nor hypothecated in any way whatever.

Q. Do you mean to state that no stock whatever has been issued by the Consolidated Company since the consolidation except to the parties named in these schedules submitted by the constituent companies?

A. No, sir, I do not mean to say that.

Q. Then to whom as well has any stock been issued by the Consolidated Company?

A. To the treasurer of the company.

Q. Who is he?

A. Myself.

Q. State the total amount that has been issued to James W. Smith, treasurer?

A. $3,647,940.

Q. What book or books, or papers show the disposition that has been made of that stock by James W. Smith, treasurer?

A. There is no book, paper or any thing else showing that.

Q. You mean to say there has been nothing whatever?

A. No, sir.

Q. Is that in one certificate?

A. No, sir, several certificates.

Q. Have you got those certificates?

A. I have them in my custody.

Q. Will you produce them?

A. No, sir.

Q. Will you please state how many certificates there are carrying that $3,647,940?

A. There are two blocks issued; one for the amount reserved for the working capital and one to pay the indebtedness of the old companies as it matured; I think there may be twelve or fifteen certificates altogether, in 3,000 and 5,000 shares and so on.

Q. Have you not an account or a book in which you keep an account, or in which you have proposed to keep an account of
8855 that stock and its disposition?

A. No, sir.

Q. Has any of the indebtedness assumed by the Consolidated Company been paid?

A. Yes, sir.

Q. Have some of the bonds been paid?

A. Yes, sir.

Q. Which company's bonds have been paid?

A. The Harlem Company's bonds, and the notes of the Knickerbocker Company which were secured by mortgage.

Q. What other companies?

A. That is all.

Q. No other indebtedness has been paid off by bonds or notes?

A. Nothing of that yet; nothing for which this stock is reserved.

Q. Have any other company's bonds been paid, or notes, are you sure about that?

A. I think not, sir.

Q. What is the total amount of the Knickerbocker indebtedness that was so paid?

A. Four hundred and fifty thousand dollars.

Q. To whom was that paid?

A. To the holders of the notes.

Q. What books will show that in the Consolidated Company, to whom they were paid?

A. I think our check book will show; it was paid in two sums.

Q. Name them.

A. One on the American Exchange Bank of $330,000; a Mr. Brown, a connection of Mr. Cutting's, to whom they were originally issued, $120,000; I think there are only two checks.

Q. What other payments besides those were made?

A. The Harlem; that was paid to the registered holders of the bonds.

Q. In different sums?

A. Yes, sir.

Q. Don't you know the principal men to whom the payments were made?

8856 A. I think there were from twenty to twenty-five holders of those bonds? The book of the registered bonds would show that.

Q. Against that fund $3,647,940, to meet what payments?

A. The notes of the Knickerbocker Gas-light Company, and the bonds of the Harlem Company.

Q. It was to meet those payments and other payments like that that this item of three millions and odds was issued to James W. Smith, treasurer?

A. Yes, sir; a portion of it.

Q. All of those payments were covered by that stock?

A. No, sir; the payments were not covered by it.

Q. Well, some of them were?

A. No, sir; the payment was made by drawing a check on the bank where he had the money.

Q. Was that stock which was issued to you reserved in part or for all those payments?

A. It was reserved to meet them.

Q. Do you mean you held stock to meet payments, and that payments were made as contemplated, and that you kept no account of those payments as against that stock; is that what you mean the committee to understand?

A. I don't want them to understand any thing.

(By the CHAIRMAN:)

Q. Is the way General Tremain puts it the truth of the matter?

Q. If you don't understand the question I will repeat it; is it true that you have got no account of those payments of the bonds of the Harlem, and the notes of the Knickerbocker, in connection with an

account of this block of three millions of stock which was issued to you as treasurer?

A. It is.

Q. You testify that there is no book or paper that will show the number of payments that have been made on account of that issue of that three million block of stock?

8857 A. These papers that I have here I think show it—the balance sheets; there is no book—there is no occasion for a book.

(By Senator ROBINSON:)

Q. Is there any book or paper that will show it?

A. I believe I answered the question that the check-book will show it.

Q. Is there any other paper that will show it?

A. No, sir, not that I know of.

Q. Are there any books of the Knickerbocker Company that will show that indebtedness?

A. I think not; nor the Harlem either.

Q. Is it true the check-book will not show to what particular account these payments are to be charged?

A. I testified that the check-book will show that.

Q. Will the check-book show that they are charged against this block of stock?

A. No, sir.

Q. Is there any thing in the Consolidated office, of books or papers, that will show?

A. No, sir.

Q. Is there any thing that will show that, any paper of this block of stock in the Consolidated Company?

A. No, sir.

Q. Has this indebtedness been paid out of the general earnings of the company?

A. Partially so; the general receipts of the company.

Q. Was the dividend of June paid out of the general earnings of the company at that time?

A. Yes, sir.

Q. Where will that account be found?

A. In the balance sheets.

Q. Will you now produce before this committee those original schedules of the shareholders, that were submitted by the constituent companies and were made the basis of the issue of the consolidated stock, and also the stock ledger showing what stock was issued, and the stock transfer books, showing what stock was transferred?

8858 A. I would respectfully ask the committee the privilege to consult with counsel, and I make a very respectful request to that effect.

(By Senator MURPHY:)

Q. How long a time would you require to consult with counsel?

A. I think I could see him to-morrow morning.

Mr. TREMAIN: My suggestion is, that the answer of Mr. Smith now puts the committee in the position of having issued a subpœna *duces tecum*, and not having it responded to. He asks now that the books be not brought here until he has consulted with counsel.

The WITNESS: Allow me to say that these books should not be brought here; they are very large and bulky, and I think the committee will deem that it will be better to have them examined at the office; if the counsel will show to the satisfaction of the committee that those books enter into the scope of this inquiry in any way whatever, I think there will be no difficulty about it.

The CHAIRMAN: The Court of Appeals has decided that the witness is not entitled to be represented by counsel; that is the settled law now of this State.

The WITNESS: At the same time I do not suppose this committee is going to ask for books which are not of any possible use or benefit to them for the purpose of this investigation; the same question came up last year, and Mr. Thomas decided it made no difference as to whom the stock was issued to.

The CHAIRMAN: The subpœna did not cover these books?

Mr. TREMAIN: No, sir.

The CHAIRMAN: Therefore he is not in contempt; you ask to have them produced, do you?

Mr. TREMAIN: Yes, sir; at the same time it would be satis-
8859 factory if the expert was permitted to examine them at the company's office instead of bringing them to this room; with a view to avoid the necessity of finally bringing the books into this room, will you assent to their examination by the expert under the direction of the committee at the company's office, for the convenience of the company?

The WITNESS: And also the committee.

Mr. TREMAIN: And the committee; what do you say to that?

The WITNESS: If counsel will advise it I shall be very glad to have you do it at the office; I am not a lawyer, and I think I ought to have, at least, an opportunity to consult counsel.

Mr. TREMAIN: I think his request is not unreasonable.

The CHAIRMAN: It is understood that the witness will produce the books; there is no dispute as to what these books are which are called for?

The WITNESS: No, sir; if it is decided by counsel that we shall produce them, we will make no opposition.

Q. What are the dates of those payments of the Knickerbocker and Harlem indebtedness to which you have just alluded?

A. They show approximately on the balance sheets; the Knickerbocker notes I think are in March, or about that time, and the Harlem indebtedness matured on November 1st; and it is paid; with the exception of $3,000 of the Harlem, they were all paid within fifteen days of the first day of the present month.

Q. When was the Knickerbocker paid?

A. March or April; I think it was in March, or a good portion of it.

Q. Have you the rough memoranda minutes that were made by the secretary of the board?

A. No, sir.

8860 Mr. TREMAIN: I suggest that the examination of Mr. Smith be suspended now until he shall respond to this subpœna *duces tecum*, and that he be deemed a witness on the stand and not yet dismissed, because we shall wish to ask him some questions after the expert shall have made some further investigation.

The CHAIRMAN: We will merely suspend his examination until to-morrow morning.

Q. The Metropolitan schedule does not seem to be the original upon which Mr. Rowland made his certificate; do you know where the original is?

A. No, sir.

Q. Is that the original book which the Metropolitan Company submitted?

A. Yes, sir.

Q. Where is there any authentication that it is the Metropolitan book?

A. There is no authentication.

Q. Where is Mr. Rowland's certificate?

A. I don't think I ever saw it; I don't think it was ever submitted to the company; I have never seen it.

Q. That is the identical book upon which the basis was had?

A. Yes, sir.

H. E. GAWTRY, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are secretary of the Consolidated Company?

A. Yes, sir.

Q. You was in the Municipal Company before that?

A. Yes, sir; I was vice-president.

Q. And for how long?

A. I don't remember whether it was two or three years.

Q. You are actively engaged as one of its officers?

A. Yes, sir.

Q. You are in the office all the time?

A. Pretty much; yes, sir.

8861 Q. You have acted as secretary of the executive committee, for all the committees of the Consolidated?

A. Most of them I think.

Q. For what committee have you not?

A. I don't know as there is any committee I have not acted as secretary for.

Q. Did you keep a memorandum of the minutes of the board before you wrote them in the book?

A. They were all taken in memoranda at the time and as soon as they were copied in the book they were destroyed.

Q. They were destroyed from week to week?

A. Yes, sir; as fast as they were copied in and the papers have been destroyed from month to month.

Q. Were they destroyed before the minutes of the board meeting were read over?

A. No, sir; they were not entered until they were read over and approved.

Q. Did you keep any memorandum book of what was done at the board meetings?

A. Nothing beyond that.

Q. What other books are there containing the records of any committees or any officers, or any records of any character whatever of the operations of the Consolidated Company?

A. There are none but these three books, the minutes of the board of trustees, the executive committee, and the finance committee.

Q. The contract with the Farmers' Loan and Trust Company in respect to registering its stock; is there such a contract?

A. I never heard of it.

Q. When did you first have the stock registered at the Farmers' Loan and Trust Company?

A. I don't remember the date.

Q. Was it before the stock was listed?

A. I don't know.

The committee adjourned to Tuesday, November 24, 1885.

8862 NEW YORK CITY, FIFTH AVENUE HOTEL,
November 24, 1885.

Second Day.

The committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the committee.

THOMAS F. ROWLAND, being recalled, testifies as follows:

Examined by Mr. TREMAIN:

Q. You have brought with you the contracts referred to in the testimony of yesterday?

A. Yes, sir.

Q. Referring to those contracts, please state the figures representing the total amounts paid you for the works specified yesterday, which you constructed, beginning with the work which you did in 1871?

A. I have no contract; I have what appears to be a copy of a contract made at that time; the original, I presume, is with the other parties; this contract was made with Henry J. Davison.

(By the CHAIRMAN:)

Q. With Davison as the representative of some company?

A. Davison personally.

Q. Under a contract in November, 1871, with Henry J. Davison you constructed certain works in the Union Gas-light Company's works at what place?

A. I agreed to construct at Ninety-eighth street, between First and Second avenues.

Q. As the result of that contract you entered upon the work?

A. Yes, sir.

8863 Q. And received in total for that work how much?

A. That I have not got here.

Q. This contract is for $1,250,000—was it completed on your part?

A. No, sir; about half completed.

Q. And about half the contract price received?

A. Yes, sir.

Q. Take the next one, if you please?

A. In the order of the dates?

Q. Yes; that is the most convenient; this represents the work done on the Knickerbocker Company, then under the name of the Union Gas-light Company; witness produces a contract made between himself and the Municipal Oxygen Gas-light Company of New York, dated June 13, 1876; this is a contract under which work was done.

A. Yes, sir, between Forty-fifth and Forty-sixth streets, and being the works now used by the Municipal Company.

Q. Under this contract there was paid you how much?

A. One hundred and sixty thousand dollars.

Q. The sum specified in the contract was paid you?

A. Yes, sir; whatever it was specified in the contract they paid me.

Q. Now take the next one; the stenographer will note that this contract provides that Mr. Rowland shall furnish ready for service upon the property of the Municipal Oxygen Gas-light Company, located on the North river, between Forty-fifth and Forty-sixth streets, buildings, tanks, gas-holders and gas-making plant, of such form and dimensions as to be capable of the daily production of half a million cubic feet of gas manufactured by the Tessi-du-Motay process, according to an accompanying schedule, and for the

8864 payment in consideration of $165,000, which the witness says was paid; now the next one, referring to the previous paper, the contract first produced, and dated November 29, 1871, how much, if any, of the payment of about $750,000 was in stock of this Union Gas-light Company?

A. All they paid under that contract was paid in stock.

Q. When you speak of $750,000 you mean stock at its par value?

A. Yes, sir.

Q. Take the next one; the witness next produces a contract dated April 26, 1877, between himself and Charles G. Francklyn, acting for the Municipal Gas-light Company; whereby the witness agrees to construct upon the property of that company, located on the North river, between Forty-fourth and Forty-fifth streets, four gas-holder tanks and a gas-holder of 375,000 cubic feet working capacity.

A. Four tanks and one gas-holder.

Q. According to details described in the contract?

A. Yes, sir.

Q. And for which payments were to be made in all amounting to $155,000?

A. I think that was the sum stated in that paper I received.

Q. And also the sum of $37,000 for an additional gas-holder?

A. Yes, sir.

Q. Did you also build the additional, calling for the payment of $110,000?

A. In case of building three additional gas-holder tanks, I did not at that time do it; but I did it subsequently.

(By the CHAIRMAN:)

Q. Under this contract?

A. Under another contract; under this contract I received only $155,000 and the $37,000.

Q. Making $192,000 under those contracts?

A. Yes, sir.

Q. The next one in chronological order is what?

A. Dated May 28, 1877.

Q. The witness produces a contract dated May 28, 1877,
8865 between himself and Charles G. Francklyn, acting for the Municipal Gas-light Company, under which he did work on the same properties.

A. On the same properties as last mentioned, where the four tanks were put in.

Q. You did not increase its capacity by this?

A. That is building simply the gas works; the other is building simply the storage tanks.

Q. This contract calls for the building of gas works, under which payments were provided for to an extent in all of how much?

A. Three hundred and eighty-two thousand dollars.

Q. Is that the total?

A. I think that is the total that was paid—$382,000.

Q. These payments were made in money and not in stock?

A. There was $40,000 paid in bonds of the Municipal Company, and all other payments were made in money; I think the bonds applied to both contracts.

Q. All the rest was in cash?

A. Yes, sir.

Q. Go on and produce the rest of the papers relating to the Municipal Company. The witness next produces——

A. That contract provides for two of those gas-holders.

Q. Dated April 19, 1878, covering one of the gas-holders already shown?

A. That provides for two; it states for two gas-holders.

Q. And for a payment of $216,000 in all?

A. Yes, sir; I did all that work and received that payment.

Q. Was that payment in stock, bonds or money?

A. I received $40,000 in bonds, and all other payments which I have ever received have been in cash.

Q. The next one was an agreement, dated February 20, 1880, be-

tween himself and the Municipal Gas-light Company of
8866 New York, providing for the construction of a gas-holder of two million cubic feet capacity, and for the payment under it of $186,500; you did that work and received that money?

A. Yes, sir.

Q. The witness produces a contract, dated April 24, 1880, between himself and the Municipal Gas-light Company, providing for the construction of a gas-holder similar to the holder now in Forty-fourth street, and for the payment of $39,000?

A. Yes, sir, I did that work and received that money; those are all the written contracts I had with the Municipal Company.

Q. Did you do other work for the Municipal Company which was alluded to yesterday which was not covered by the contract?

A. Yes, sir.

Q. Can you state the amount paid you for that other work?

A. No, sir; not definitely.

Q. Well, approximately?

A. Twenty thousand dollars; I built a boiler-house for a set of boilers and did other work.

Q. What else?

A. Three-thousand five hundred dollars for a water tank.

Q. What else?

A. Repairs from year to year which, I think will average about $1,000 a month, or $12,000 a year, since 187-, up to November, 1884.

Q. Have you covered by your testimony all the work substantially which you did on the Municipal works?

A. All I think of now.

Q. Do you know of any work being done?

A. Yes, sir; $18,000 more; I put in a railway track and elevators for lifting coal.

Q. Does that cover all the work which you did and all the payments you received?

A. I think so; I don't remember others at present at that works.

Q. From your knowledge of these works, please state
8867 whether any other substantial works of construction or of repairs has been done on the Municipal works by anybody else except by you between 1877 and 1884?

A. Yes, sir; there has been substantial work done.

Q. Tell that which has been done which you did not do?

A. About $10,000 was paid to Smith & Sayres Manufacturing Company for putting in new blowers; I took out two condensers because they were too small and I put in two new ones for about $24,000, and those old condensers I took in part payment.

(By the CHAIRMAN:)

Q. For how much.

A. I believe I allowed $1,000 for the two condensers; they cost about $10,000 when they were built.

Q. Do you mean $1,000 each?

A. Yes, sir; the water got plugged in them and they were not large enough.

Q. Do you know of any other?
A. The retorts have been renewed, I believe, entirely, once.
Q. At about what cost?
A. About $400 a bench; and there are thirty of those benches, I think, a cost of at least $400 each, amounting to about $12,000.

By the CHAIRMAN:

Q. The old retorts, what did you do with those?
A. Threw them in the yard; they were not of any value.
Q. How long had those retorts been in at that time?
A. I think they had been run about thirty months.

By Mr. TREMAIN:

Q. That makes about $14,000 or $15,000 for that work?
A. I should say so.
Q. Do you know of any other work?
A. No, sir; I only know of work continuously going on.
8868 Q. So far as the construction of the gas plant is concerned your familiarity with those works would enable you to say whether there has been any other substantial gas plant except what you have described in your testimony?
A. I would not say that there has not been; I don't remember of any other; I don't remember now of any other expenditure; they had a French condenser put in by Morrison & Tacker of Philadelphia; I think they were the parties; it cost them about $5,000; they paid $3,300 for the condensers; putting it in and making the connections cost about $5,000.
Q. What year was that?
A. I should think it was 1880.
Q. You have been, by reason of making repairs, pretty familiar with those works?
A. Not personally; I have not been in the habit of going there; my assistants go there.
Q. Do you remember any other substantial piece of construction at those works?
A. No, sir; I can't say that I do.

(By the CHAIRMAN:)

Q. In your judgment what you have stated covers substantially the whole?
A. Yes, sir; that is as near as I can recollect.
Q. That covers the Municipal?
A. Yes, sir.
Q. Now let us take the next one?
A. I have given you the foundation of the Knickerbocker; I believe, sir, that paper sets forth the first operation after that as far as I am concerned.
Q. The witness produces *at* the next contract after the first one produced, a contract dated April 1, 1880, between himself and the Knickerbocker Gas-light Company of New York; this contract provides for the construction of buildings, tanks, gas-producing apparatus, pumps, connections, miscellaneous construction as described

in the contract, and for a brick tank for the reception of a
8869 gas-holder removed from Forty-fifth street, all to be constructed on the property located between East Ninety-seventh and Ninety-eighth streets on Second avenue, and for the payment in consideration $415,000 in all?

A. Yes, sir.

Q. Was that work done and the payments made for that amount?

A. Yes, sir.

Q. That is what you referred to yesterday?

A. Yes, sir.

Q. That is on the same property covered by that contract between the Union Gas-light Company and yourself?

A. Yes, sir; I wish to have the statement made yesterday corrected.

Q. The witness desires to correct his testimony of yesterday according to these figures as stated here in the contract?

The CHAIRMAN: You only got it $1,000 out of the way; I think you did pretty well.

Q. When was that work completed under this contract now produced?

A. I couldn't tell without getting the date; it was completed in December of 1880, I think.

Q. Has any other work been done there since?

A. Yes, sir.

Q. Was that money paid?

A. Yes, sir.

Q. In cash?

A. Yes, sir.

Q. Who made that payment?

A. It was made at the Municipal office.

Q. From time to time?

A. Yes, sir; I can't say who by; I was not in the habit of collecting the money.

Q. Current amounts under that contract I suppose were received?

A. Yes, sir.

Q. What other work was done at that place?

(The witness produces a contract dated February 7, 1884, between himself and the Municipal Gas-light Company; this contract
8870 provides for the construction of two gas-holder tanks upon the same property.)

A. That is for re-construction; they were old tanks.

Q. Re-construction of two gas-holder tanks, what else?

A. And two gas-holders; that's all.

Q. And for payment in consideration thereof of the total sum of what amount?

A. One hundred and sixty thousand dollars and the displaced material.

Q. That $160,000 was paid to you?

A. Yes, sir; in money.

Q. By which company?

A. At the office of the Municipal Company; presumably by that company.

Q. The old material you refer to in part payment it was worth what?

A. About $10,000; it was two gas-holders of two-thirds the capacity of these new ones.

Q. The new ones cost how much?

A. The new ones and the tanks cost $160,000.

By the CHAIRMAN:

Q. The old ones were worth about $10,000?

A. Yes, sir; those tanks had been in about nine years; the reason why they were not worth any more was they were entirely eaten up; at the time they were built, and the original company failed, nobody gave them any care; the water was leaking out of the tanks, and the air circulated through the tanks, and when a gas-holder is subject to the action of dampness and air I have known them to be eaten badly inside of a year.

Q. Their value then was for old iron only?

A. Yes, sir.

Q. As a fact, such tanks do wear out?

A. I have never seen one wear out.

8871 Q. As a matter of fact such tanks do become unfit for use?

A. It would seem so, but that is not my experience.

Q. You have not any doubt but they become unfit for use?

A. They do by being left open; but not if properly treated.

Q. As a matter of fact they do become unfit for use?

A. No, sir; there is not one in one thousand that is thrown out unfit for use if properly treated.

Q. For one reason or another they are superseded?

A. Yes, sir.

Q. And when so thrown out have no value except for old iron?

A. Yes, sir; they have value.

Q. For what?

A. To be removed to other places for use.

Q. Still their value would be very greatly diminished?

A. Yes, sir.

By Mr. TREMAIN:

Q. If you were valuing such property as that on those works, for instance to-day, in order to estimate them, would you require them to be appraised as to whether you would value them for use at that place, or to be put up for some other gas works; that would be an element of your estimation of the value?

A. Yes, sir; I should estimate them for use at the place where I found them unless otherwise ordered.

Q. If for some other place it would be a different standard of value?

A. Yes, sir.

Q. So that when you value property you mean for use at that place?

A. Yes, sir.

Q. What other work have you done—take one of the other works?
A. This is the Harlem.
Q. Witness now produces a contract dated March 12, 1884, between himself and the Harlem Gas-Light Company, the only
8872 contract with the Company?
A. That is the only one we seem to have; we did have another contract.
Q. Having refreshed your recollection, are you able to say you did yesterday describe substantially all the work you did?
A. Yes, sir.
Q. This contract provides for the construction upon the property at One Hundred and Eleventh street and First avenue, of a gas plant capable of producing 3,000,000 cubic feet of gas per day?
A. That is not true, sir.
Q. Then correct me; this contract provides for the construction at One Hundred and Eleventh street and First avenue of what?
A. Of gas-making machinery, which, in so far as it goes, is to be capable of handling 3,000,000 cubic feet per day of gas, said gas having been produced by other machinery; that contract was written when I was abroad.
Q. Does that cover all this contract?
A. Yes, sir.
Q. And for payment in consideration thereof of $188,795?
A. Yes, sir.
Q. All the work was done and the money received?
A. Yes, sir.
Q. And subsequently there was received——
A. Previously.
Q. For work done on that same property on another contract?
A. Yes, sir; amounting to about $36,000.
Q. When was that done?
A. Eighteen hundred and seventy.
Q. Did you do any other work between 1870 and 1884 on those works?
A Yes, sir.
Q. The work which was done in 1870, has it not been described in some of these other contracts?
A. No, sir.
Q. With whom was that work contracted for?
A. With the Harlem Company.
8873 Q. Was any other work done by you on the Harlem property?
A. No, sir; except the gas-holder and the condenser which cost $8,000; that is all the work I have done there.
Q. That makes about $233,000?
A. Yes, sir.
Q. Now do you know of any other work of construction that has been made or performed for the Harlem property?
A. I know that other work has been done there.
Q. A gas-holder was built by Starr & Co., of Camden, N. J., in 1870, in the tank located alongside of one I put my gas-holder in; each one of us had a contract of about the same amount of money.

Q. Do you know of any other work?
A. No, sir.
Q. So far as your knowledge extends, your testimony has now described the work of construction at this property?
A. Yes, sir; so far as I know.
Q. Has that covered the buildings—your testimony?
A. It covers the buildings which I put up—two buildings I put up.
Q. Who made that contract?
A. I did.
Q. Are there any other buildings put up by anybody else?
A. Yes, sir.
Q. What are they?
A. Retorts, purifying-houses, and, I think, a condenser-house and a boiler-house, and coal sheds.
Q. Do you know when they were built?
A. No, sir.
Q. You found them there in 1884?
A. Yes, sir; this gas-holder, which I put up, was not on that property; it was on the next block; I did not have occasion to go into the Harlem works.
Q. Does that cover all?
A. I told you I received a letter from Mr. Streiker.
Q. Who brought the letter?
8874 A. The engineer; and that is the letter he handed me, taking an exception to my estimate of the value of the property.

(By the CHAIRMAN:)

Q. Within the last fifteen years have great improvements been made in the apparatus used in the methods employed in manufacturing gas?
A. That, sir, is a very mooted question; engineers do not agree upon that subject; my judgment is that there has been.
Q. In consequence of such improvements have prior kinds of apparatus been superseded by more recent, and supposed to be better apparatus, to a considerable extent?
A. No, sir; I don't know that they have been superseded; as cities have grown, and greater requirements have been made for gas, the works have ben enlarged, and in these enlargements some new and perhaps novel ways in the way of making gas have been employed; but the old ones have not been thrown out of use; that is my experience.
Q. Is it not a fact that there is among gas producing interests a strong prejudice in favor of the old methods?
A. As a class, yes, sir; there are some exceptions to that; I am simply a maker of gas machinery.

(By Senator MURPHY:)

Q. Which is the most healthful, gas made by water, naphtha or by coal?
A. Neither one is healthful.

(By the SAME:)

Q. Which is the most healthful of the two, or the least injurious?

A. I think, sir, that gas made from the decomposition of water is a more deadly poison than that made from coal; both being poisonous.

Q. Witness produces a letter and says that this is a letter he received at the hands of Mr. Streiker?

A. It was left at my office in my absence.

Q. You suppose he represented Mr. Zollikoffer?

8875 A. Yes, sir; I have written a letter since to Mr. Zollikoffer in response to this.

Q. Have you a copy of it?

A. Yes, sir.

Q. We will mark it Exhibit "G, November 24;" I will read the r-ply, and Mr. Rowland will please make a copy of that letter for the committee?

A. I will; here is an answer from Mr. Zollikoffer.

Q. Please make a copy of that also and send them to the Chairman to-morrow; I observe that your estimate stated in the letter of October 6, 1884, to Mr. Zollikoffer, names the figures $1,798,269?

A. Yes, sir.

Q. As the total of your appraisement?

A. Yes, sir, that was the total.

Q. Will you state what that covers in the Metropolitan Company?

A. I could not do that; I can give you the details of it.

Q. What does it cover—the meters?

A. No, sir.

Q. Nor mains, nor services, nor real estate lots?

A. No, sir.

Q. Does it cover the office building?

A. Yes, sir, the office at the works, I mean.

Q. Does it cover all the property between Forty-first and Forty-second streets between Tenth and Eleventh avenues?

A. Yes, sir.

Q. Does it cover all the property between the Eleventh avenue and Hudson river between Forty-first and Forty-second streets?

A. Yes, sir.

Q. Does it cover all the property between Sixty-fifth and Sixty-sixth streets, Tenth and Eleventh avenues?

A. Yes, sir; all the apparatus.

Q. Does it cover all the property between Sixtieth and Sixty-first streets Avenue A. East river?

A. Yes, sir.

Q. And all the property between Sixty-second and Sixty-third streets, in Avenue A?

A. No, sir.

Q. Does it cover any of it?

A. Block No. 4.

8876 Q. Is that your copy?

A. Yes, sir.

Q. Please turn to Avenue A, and First avenue, Sixty-second and Sixty-third streets?

A. Yes, sir.
Q. Total appraisement of that is how much?
— hundred and three dollars.
Q. It is not $164,525?
A. No, sir.
Q. Take another, Avenue A and First avenue, Sixtieth and Sixty-first streets?
A. We have no such property in our valuation.
Q. Tenth and Eleventh avenues, Forty-first and Forty-second streets?
A. One million one hundred and eighty-three thousand seven hundred and sixty-one dollars.
Q. Is it not $1,269,920?
A. No, sir.
Q. Tenth and Eleventh avenues, Forty-first and Forty-second streets, $8,250, is that right?
A. Twelve thousand two hundred and fifty dollars.
Q. It is not $8,250?
A. No, sir; that is somebody else's valuation.
Q. Now take Tenth and Eleventh avenues, Sixty-fifth and Sixty-sixth streets?
A. Four hundred and forty-three thousand four hundred and seventy-five dollars.
Q. Is it not $387,448?
A. No, sir.
Q. Those valuations did not include the lots?
A. No, sir.
Q. But did include the buildings?
A. Yes, sir.
Q. Show me the recapitulation of the Metropolitan in this book of yours; I see you have street mains there—did you value those?
A. No, sir.
Q. How did it happen you put them on your book?
A. I don't know whether my boy put them in there or not.
Q. Was this a copy made after the consolidation?
A. No, sir; it was made in September.

Q. I observe that the copy of the street mains in this book
8877 at page 83, foots up the same as mentioned in Exhibit "C 2;" you can't explain that?

A. No, sir.
Q. Your recapitulation of the property you did value is as follows?
A. On the property of the Metropolitan that I valued, yes, sir.
Q. Your recapitulation of the property of the Metropolitan is as follows: "Block No. 1, $1,183,761; block No. 2, $12,230; block No. 3, $443,475; block No. 4, $158,803; total, $1,798,269." This is from page 83 of the book containing the copy of the valuation made by Mr. Rowland?

JAMES W. SMITH, being recalled, testifies as follows:

Examined by Mr. TREMAIN:

Q. The expert of the committee is ready now to enter upon the examination of the books called for yesterday—is it convenient for the company that they be examined at the company's office, or will they be produced here?

A. It would be much more convenient to have them examined at the company's office.

Q. The expert is ready to go to work immediately; then the books are deemed to be before the committee for that purpose now?

A. Yes, sir; for that purpose.

Q. Have any loans been made by the Consolidated Gas Company since November, 1884—any money been borrowed?

A. Yes, sir.

Q. How many such loans have there been.

A. I think three.

Q. When was the first?

A. I could not tell without reference to the books; I think I could tell if you would show me those papers.

Q. Who are they made of?

A. Borrowed of the City Bank.

8878 Q. Do you remember the amounts?

A. The first was, I think, $400,000.

Q. The second?

A. Two hundred thousand dollars.

Q. The third?

A. Three hundred thousand dollars.

Q. Notes of the company given in each instance?

A. Yes, sir.

Q. Are there any other notes of the company out?

A. No, sir.

Q. Are those demand notes?

A. They were; they are not out now; not all of them.

Q. They are call loans?

A. They were.

Q. Any of those notes outstanding now?

A. Yes, sir; the last loan of $300,000.

Q. Those loans were made without security?

A. The notes of the company made on the credit of the company without any other security.

Q. What committee acted authorizing those loans, if any?

A. The finance committee, or the majority of the members.

Q. The finance committee was composed of Messrs. Pyne, Day, Huggins and Gawtry?

A. Yes, sir.

Q. With the president *ex-officio*!

A. Yes, sir.

Q. And secretary?

A. The secretary is one of the number.

Q. Give us those dates, if you can, Mr. Smith; can you tell about what period those large loans were made; from your recollection about when were they made?

A. I think I can; I think the first one was in January or February, for the sum of $400,000.

Q. And the next one was $150,000, at about what time?

A. Two hundred thousand dollars.

Q. At about what time?

A. June or July.

Q. And the last one was for $300,000?

A. Yes, sir; in September.

8879 Q. When was the first loan paid off—about when?

A. My impression is it was paid in the same month in which it was borrowed—within thirty days of the time.

Q. Do the books show?

A. Yes, sir.

Q. And show what interest was paid?

A. Yes, sir.

Q. Was it two per cent.?

A. I think it was.

Q. When was the next loan paid off?

A. I think it was paid off in one or two sums, and within sixty days of its negotiation.

Q. When was the last loan paid off?

A. That has not been paid yet.

Q. Were the proceeds of one loan used in part to pay off the next?

A. No, sir.

Q. The dividend was declared in the meeting in May?

A. Yes, sir.

Q. Why was it necessary to authorize money to be borrowed at or about that same time, as the minutes imply?

A. I don't understand that there was any money borrowed at or about that time; it might have been; if it was, it was for the general uses of the company.

(By the CHAIRMAN:)

Q. Was not the second loan made at or about the same time that the first dividend was paid?

A. It might have been, sir; not at the period he spoke to me about; it might have been about the time the dividend was paid or being paid, but not at the time the counsel made it.

Q. I call your attention to the resolution of the board passed January 28, 1885, by which the finance committee was authorized to borrow money from time to time as might be required to pay the balance due to the constituent companies and their maturing obligations assumed by the consolidation—what, if any thing, was

8880 done pursuant to that resolution?

A. The loans that I have just stated.

Q. That is all; were those all the transactions that were had pursuant to that resolution?

A. That is all I recollect, sir.

Q. Who conducted the business relating to those transactions, yourself?

A. Yes, sir.

Q. Did you make the negotiations?

A. Yes, sir.
Q. With whom?
A. The officers of the bank?
Q. With Mr. Pyne?
A. At three different times; once or twice with Mr. Pyne, and once or twice with Mr. Palmer.
Q. Was not the original arrangement made with Pyne?
A. I don't think so; I think he was absent from the city at the time of the negotiations of those loans.

(By the CHAIRMAN:)

Q. You mean to say that you think not all of the loans were negotiated with Pyne?
A. I know they were not, but I could not tell which; I don't recollect; there were three loans; two were made with one party, and one with another, and which the two were made with I don't recollect.
Q. Was not the first loan made with Pyne?
A. I don't recollect.
Q. The minutes of the finance committee at a meeting February 3rd, where you made a report, and immediately afterward the chairman of the committee is recorded as stating that Mr. Pyne would loan the amount required on call at two per cent. per annum—does that refresh your memory so as to say that the original loan was made with Mr. Pyne?
A. No, sir; the negotiation was made with the City Bank, with one of the officers.
Q. Mr. Pyne is an officer of that bank?
A. Yes, sir.

8881 (By the CHAIRMAN:)

Q. Is Mr. Palmer also an officer of that bank?
A. Yes, sir, he was the cashier, and I think he is yet.
Q. Both officers of what bank?
A. The National City Bank.
Q. I call your attention to a resolution directing the officers of the company to take the necessary steps to have the stock of the company listed at the Stock Exchange; did any of the constituent companies, to your knowledge, have their stock listed before that at the Stock Exchange?
A. Not that I know of.
Q. Don't you know none of them were ever listed before?
A. I think not.
Q. They were not listed on the Stock Exchange?
A. I think not; I think they required them to be registered before listing.
Q. At a meeting of February 25th a resolution is found approving the recommendation of the executive committee to close the works of the Harlem station at One Hundred and Eleventh street, and directing them to be closed—was that done?
A. To the extent of the recommendation, yes, sir, so far as the manufacture of gas was concerned.

Q. No gas was produced?
A. It was gradually closed so far as the manufacture of gas was concerned.
Q. Is there any gas in the holders there?
A. Yes, sir.
Q. That is made where?
A. At the Ninety-ninth street station—the old Knickerbocker works?

(By the CHAIRMAN:)

Q. So that now no gas is manufactured at the Harlem works?
A. Not at the One Hundred and Eleventh street station; we adopted the plan of naming them stations.
8882 Q. The One Hundred and Eleventh street station is what was formerly known as the Harlem works?
A. Yes, sir.
Q. As matter of fact, how many gas-holders are in use and contain gas there?
A. All of them, sir, I think.

PAGE 53—MINUTES BOARD OF DIRECTORS.

The following preamble and resolution were presented:
"WHEREAS, The articles of agreement between the consolidating companies, dated September 29, 1884, under which this company was organized, provided that 13,030 shares of the capital stock of this company should be retained to the use of this company, and be disposed of for the purchase of supplies as a working capital; and
"WHEREAS, Money is required to cover the cost of supplies, and for the general purposes of the company.
"*Resolved*, That the shares remaining unsold, of the number so retained to the use of the company, viz.: 12,899.40 shares, be issued to the treasurer, to be disposed of, or pledged for loans, under instructions of the finance committee, and that the money received therefor be applied to the purpose of the company under the direction of the same committee."
Also the following:
"WHEREAS, This company has retained, pursuant to such agreement of consolidation, 23,580 shares of stock, in lieu of, and as satisfaction of certain liens and indebtedness of the consolidating companies, unpaid by them,
"*Resolved*, That all such shares not hereinbefore issued, viz.: 23,580 shares be issued to the treasurer, to be by him disposed
8883 of or pledged, under the direction of the finance committee, to provide means to pay such outstanding indebtedness or obligations as have already been purchased, or may be from time to time purchased, or paid for or off by this company, as contemplated by such agreement.
"Carried unanimously."

Q. The property has not been sold, has it?
A. No, sir.

Q. Nor rented?
A. No, sir.
Q. On page 53 of the minute-book I find a resolution reciting that money is required to cover the cost of supplies, and for general purposes of the company, and directing that the shares not heretofore issued, 23,580, be issued to the treasurer, to be by him disposed of, or pledged, under the direction of the finance committee; prior to that time had any shares been issued to the treasurer? That resolution is dated April 22, 1885.
A. There had not.
Q. In a resolution adopted at the same date there is this phrase: "*Resolved,* that the shares remaining unsold of the number retained for the use of the company, 12,890, 40-100 be issued to the treasurer to be disposed of, or pledged." Were they ever issued?
A. Yes, sir.
Q. In one certificate?
A. No, sir.
Q. How many certificates?
A. From three to six, I think.
Q. Where are those certificates?
A. In the possession of the company.
Q. In your possession?
A. Yes, sir, as treasurer.
Q. Will you produce them?
A. I should be very glad under this demand, for the protection of those shares, as they represent some $3,600,000, if the committee would relieve me from bringing those shares here.
8884 Q. Will you produce them to the expert at the company's office—that is what I mean?
A. Yes, sir, with pleasure.

(By the CHAIRMAN:)

Q. It seems that on the 22d of April certain stocks had been retained by the company for its own use; is that correct?
A. Yes, sir.
Q. How many shares at that time had been so retained?
A. The resolution recites it correctly.

Mr. TREMAIN: I will have this resolution copied.
The CHAIRMAN: He says the minutes will show; we will take a copy of the minutes.

Q. By the terms of this resolution it appears that some of the stock had, previous to that date, been issued—do you wish to make any correction of your testimony?
A. No, sir; I will explain that; that was taken by the constituent companies, the small amount there, the discrepancy, if so, I presume to make a more even division of the percentage of the shares in the new from the old; I think this is about $13,000.
Q. Was that done under a committee adjustment, the settlements of these accounts by which these amounts are arrived at?
A. By representatives of each of the companies.

Q. Who were an adjusting committee who acted for that purpose?
A. Yes, sir.
Q. It commenced to act when—in the fall of 1884?
A. I think at once upon the consolidation.
Q. When did they cease to act—they are acting still?
A. No, sir; they have not taken any action in several months.
Q. Their work is not all completed?
A. Substantially I think it is.
Q. Who comprised that committee?

A. Thomas K. Lees, representing the New York company;
8885 James W. Smith, representing the Manhattan Company; Oscar Zollikoffer, representing the Metropolitan Company, I think Charles G. Francklyn, representing the Municipal Company; H. E. Gawtry, representing the Knickerbocker Company; John H. Morse, representing the Harlem company.

Q. That committee met always in Irving Place?
A. Yes, sir; at the office of the company.
Q. The board meetings have been held at 52 Wall street?
A. Latterly.
Q. Always?
A. I think not; I think the meeting when we organized was not.
Q. Since, you always meet at 52 Wall street?
A. I think we had one or two meetings of the board there; for the last few months we have met at 52 Wall street.
Q. At whose office?
A. In the directors' room of the City Bank, with one exception, and then we met in the directors' room of the New York Life and Trust Company.
Q. At what other place than 52 Wall street did you meet?
A. No other place.
Q. This committee on adjustment, were you present at any of its meetings?
A. Yes, sir.
Q. As treasurer you have to be present?
A. As one of the committee.
Q. Who acts as secretary of the committee?
A. Mr. Gawtry.
Q. They keep minutes of their doings?
A. Yes, sir.
Q. An especial account is kept by you as treasurer of the company in liquidation of each of the constituent companies?
A. Yes, sir.
Q. You collected the assets that went to the credit to each of the constituent companies on the various accounts from time to time?

A. Some of them; yes, sir.
8886 Q. And utilized those assets with the general fund of the Consolidated Company?
A. Put to the credit of the constituent companies.
Q. Of the constituent companies, and issued stock based upon it?
A. No, sir.
Q. Did you arrive at the different amounts of each of the constituent companies?

A. Yes, sir.

Q. And they varied from time to time?

A. Yes, sir; but they were credited with the amount of the final adjustment; they were credited at once; the liabilities and assets of the old companies were assumed by the Consolidated Company according to the articles of consolidation.

Q. When was the first account adjusted between the Consolidated Company and any of the constituent companies; when was the first account of any company adjusted, if it has ever been adjusted?

A. I think in January.

Q. What company?

A. Of all of them; they were gradually brought up in different items, so that a final adjustment was made of all the companies.

Q. With all of the companies?

A. I think so.

Q. For what purpose has this adjusting committee since met?

A. I don't think they have met since that time.

Q. What papers will show that action of that committee?

A. I presume the minutes of that committee.

Q. Are all of those accounts closed out?

A. In that way, each of them.

Q. All of the accounts which were the subject-matter of that committee?

A. No, sir.

Q. Which are open?

A. I think there are balances on each of them.

Q. Is any one closed?

A. They are all closed so far as the constituent companies are concerned.

8887 By the CHAIRMAN:

Q. And were closed at what time?

A. In January.

Q. At the time they were closed how did you treat the assets of the several constituent companies?

A. At that time, at the moment of the consolidation they were treated as the property of the Consolidated Company.

Q. Supposing one of the companies has an account with one of its customers of $400,000; how did you treat that account—an uncollected bill?

A. Those accounts were turned over with all other cash assets; they were credited with the amount allowed as so much credit.

Q. The same as if it had been cash or any thing else—you treated all those uncollected accounts as so much cash?

A. All those that were transferred to the company; I think all of the companies, with the exception of the Metropolitan, did turn over their cash assets, and received the amounts to which they were entitled.

Q. Now about the customers' account?

A. That was treated as a cash asset.

Q. Without regard to whether they were collectible?

A. Yes, sir; that was a matter that the committee ruled upon, as to how much cash they were entitled to be credited with.

By Mr. TREMAIN:

Q. Did not the Consolidated pay on account of the Manhattan Company in December, 1884, a dividend of $400,000 to the Manhattan stockholders?

A. They paid it in January.

Q. That was a dividend of what per cent.?

A. Ten per cent.

Q. That was out of the surplus assets which were turned over
8888 to the Consolidated Company by the Manhattan?

A. Yes, sir, amounts collectible.

Q. Do you know what those consist of?

A. Principally accounts against consumers of gas.

Q. Are you not mistaken in testifying that these accounts are closed with all the companies? Look at your trial balance of October 31, 1885, in the statement of assets and liabilities, and explain the entries of credit balances to the New York Gas-light Company of $2,000; the Manhattan, $10,000; the Municipal Gas-light Company, $30,000?

A. The New York Company, $1,000 is held to pay a liability, as stated by them to the adjustment committee, for a tax on their dividend.

Q. Which is in dispute?

A. Not at all, sir; payable on the 15th of January next.

Q. What about the other thousand?

A. The other thousand is held to meet the contingent liability of the result of a suit against the company for personal damages.

Q. The Manhattan, $10,000?

A. Held to pay a liability to the State tax on their franchise.

Q. Thirty thousand dollars of the Municipal Company?

A. That is held subject to meet some liability unadjusted, comprising a suit.

Q. There is an item in November of the Metropolitan Company, $23,753?

A. The result of the balance due that company in the accounts.

Q. Has that been finally adjusted?

A. It was adjusted in January.

Q. By whom?

A. By that committee.

Q. And assented to by the Metropolitan?

A. Yes, sir.

Q. What has the committee on works and manufactures done by the board of directors appointed?

A. Nothing more than appears upon the minutes.

Q. Did they ever do any thing?

A. Yes, sir. I think they have had some meetings.

8889 Q. Who else besides Mr. Pyne is on the committee?

A. I don't recollect; I could not give the complete number.

Q. Do they ever do any thing at all? Give the names of some of them.

A. I could not give you the names.
Q. Is there anybody else except Mr. Pyne?
A. Yes, sir, you will find it in the minutes.
Q. What did Mr. Pyne report when he reported on the committee of works and manufactures?
A. I don't recollect.
Q. Do you remember any topic that the committee on works and manufactures mentioned at any time?
A. Not sufficiently to quote in words, or the substance of it.
Q. Don't remember any subject-matter?
A. No, sir.
Q. What did the committee do, comprised of Mr. Pyne, Mr. Day, Mr. Sloan, who, from the minutes, appear to have been appointed to devise means to effect a consolidation—what did they ever do?
A. Whatever appears on the minutes, I presume.
Q. Do you know, of your own knowledge, of their doing any thing?
A. No, sir, I never was before the committee.
Q. Did you ever hear of their making a report?
A. I don't recollect of it.
Q. Do you know the subject-matter that they had up before the committee at any time, or that they reported as having had up at any time?
A. I don't recolect.

By the CHAIRMAN:

Q. As an officer of the company you do not know what either of those committees reported?
A. No, sir.
8890 Q. Or that they did any thing—do you say that?
A. No, sir, I do not.
Q. Do you remember whether or not they did do any thing?
A. I do not remember; I was not present.
Q. I find on page 58, at a meeting held July 22d, the following resolution:
"Mr. Zollikoffer offered the following:
"*Resolved*, That that portion of the minutes 'that it is not expedient that the secretary should furnish copies of the minutes to any person or officer of this company,' offered by Mr. Sloan and passed by the executive committee on the 7th of July, be stricken out; said resolution having been offered and adopted in violation of any rights as an officer and chairman of the executive committee, and denying to me such information as I think necessary for the discharge of my duties, which on motion, was laid upon the table."
Q. Do you remember who participated in that discussion when that was adopted?
A. I do not, sir.
Q. That occurred as stated in the minutes here?
A. You have the minutes before you.
Q. Was this resolution offered and laid upon the table?
A. You have the minutes there.
Q. Did that occur as stated?

A. If you will allow me to refresh my memory I presume I can answer; that resolution was offered and took effect, to my recollection, without discussion.

Q. At a meeting held October 22d, some reports are referred to as having been presented, whether they were in writing, viz.: The chairman of the finance committee presented a report, which was offered, and ordered placed on file; is that in writing?

A. I should say so, sir.

Q. Will you produce that?

A. If that is the fact, I will.

8891 Q. Also with regard to the action of the executive committee constituting the committee *in* salaries; will you produce that?

A. What is the disposition made of the last two reports?

Q. The finance committee's report was that one was ordered placed on file; the other one accepted and the committee discharged; it was referred to the committee on works and manufactures; there was also a schedule of claims against the various constituent companies—has such a schedule been furnished?

A. No, sir; not in pursuance of that resolution.

Q. Of any of the companies?

A. Not in pursuance of that resolution.

Q. Is there such a schedule of claims against the various constituent companies?

A. I think there is.

Q. Will you produce that to the expert?

A. I will so far as I can find them, with an explanation if I do not find them.

The CHAIRMAN: The meeting was when?

Mr. TREMAIN: October 28th.

Q. Can you tell whether $167,000 of bonds of the Harlem Company were paid in pursuance of a recommendation or direction of the executive committee, to that effect, which was adopted at a meeting of October 22d?

A. They were paid $167,000, being the balance of $170,000 assumed by the Consolidated Company.

Q. Is there a dispute concerning the total bulkheads of the same property of the Consolidated Company.

A. Not that I know of, sir.

Q. What was the matter that was referred to counsel in that particular?

A. I think in relation to the proposed action of the department of docks to lay out a street on the east side of the town which was to take a large amount of our property.

8892 Q. Don't you know of any dispute in respect to that total amount of bulk-heads?

A. No, sir.

(By Senator MURPHY:)

Q. That street known as the exterior street, on the East river, on Avenue A?

A. Yes, sir.

(By the SAME:)

Q. A bill of that character was introduced in the Senate a year ago, and also two years ago?
A. Yes, sir.

Mr. TREMAIN: I propose that this examination be suspended until the expert makes examination, if you will deem that Mr. Smith is excused until to-morrow, or possibly next day.

H. E. GAWTRY, being recalled, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are the secretary of the committee of adjustment?
A. Yes, sir.
Q. Has that committee had any meeting since last January?
A. I think so; I am not sure as to the date they ceased.
Q. They have adjusted all of their accounts?
A. Yes, sir, as far as their duties went.
Q. Are there any books or papers showing their official adjustment of the constituent companies, showing the official adjustment by the committee?
A. I think there is such a memorandum.
Q. When was it made?
A. I couldn't tell you.
Q. Have you the minutes of that committee?
A. I have.
Q. Will you produce them?
A. I can do so, yes, sir.
Q. Is there more than one book?
A. No.
Q. That committee required the unanimous action of its members before adjusting an account?
A. I don't remember whether that was the rule, or whether it was an understanding, or whether it was actually so.
8893 Q. Did the committee adopt that as its guide?
A. I don't know of any except such as are in the minute-book.
Q. Do you know of any instance where a difference had arisen between the representatives of the constituent companies whose accounts were under consideration and any other members of the committee?
A. I don't remember any special difference; of course there was a question of difference of values coming up all the time.
Q. How did the difference of values arise?
A. One man would think his property was worth so much, and it was open for discussion, and we would discuss it as to whether it was or not.
Q. How would the result be determined?
A. I presume by a vote; the minutes will show that.
Q. That is, the representatives of the other companies would pass upon the values of the dissenting representatives?

A. No, sir; it was more a matter of agreement.

Q. Of the things which were done, was there an agreement between you all?

A. Yes, sir.

Q. Beside the papers you have referred to as containing the statement of the adjustment of the accounts, are there any other papers which would show the adjustment?

A. Nothing outside if the general books of the companies.

Q. How shall I designate the adjustment?

A. It is in the mintue-book proper; the originals have been destroyed; it is what is known as the adjustment; that contains every thing outside of the books of the consolidated companies.

(By the CHAIRMAN:)

Q. Did they not submit their claims sometimes in writing??

A. Nothing except the schedules; I believe you have all those papers.

Q. Schedules and claims? No?

8894 A. What kind of claims do you allude to? These schedules, as I understand it—we have got there every thing that relates to the property of the consolidated companies.

Q. What was the character of the claims that came before this adjustment committee to liquidate?

A. Some lawsuits as mentioned against the New York and Municipal that came before the committee so as to decide how much should be set aside; that is one item; and the question of supplies of material.

(By the CHAIRMAN:)

Q. On hand, of the several companies which were turned over to the Consolidated Company?

A. Yes, sir.

Q. That is the values were fixed on the items, were they not, at the time of consolidation?

A. Yes, sir; they were agreed upon by the adjustment committee.

(By the CHAIRMAN:)

Q. His question was, were those items agreed upon at the time of the consolidation, November, 1884?

A. On or about that time; whether they were done immediately before or immediately after, I don't remember.

Q. Such items were specified in arriving at the total values according to which each constituent company went into the consolidation; how, then, did any difference subsequently arise in reference to those values? That is what we are asking you about now?

A. The supplies were not included in the original schedules.

Q. Then the subject-matter of difference that came up before your committee to consider were items of properties not included in the original schedules?

A. Yes, sir.

Q. As the result of your deliberations, stock was issued, or payments made?

A. Payments were made; no stock was issued to my recollection for that purpose.

8895 Q. You remember that the consolidation agreement provided that stock might be retained to meet such payments as might arise from the result of the determination of the adjustment committee, in consequence of those adjustments?

A. I believe that it contained something of the kind; I am not familiar with that part of the business.

Q. Was that done?

A. I don't know.

Q. Don't you sign the stock certificates?

A. Yes, sir.

Q. Whether as the result of the determination of the adjustment committee any stock was ever issued in payment for amounts to be paid in consequence of those adjustments?

A. I don't know; my impression is that not a share was ever issued.

Q. When you sign a stock certificate you know the occasion of its issue?

A. Yes, sir.

Q. You signed certificates, did you not, for stock that was issued to the shareholders of the constituent companies?

A. Yes, sir.

Q. And you also signed, did you not, a certificate, or certificates for stock which was issued to James W. Smith, treasurer of the Consolidated Company?

A. I think I did, because the stock certificates are signed both by the secretary and treasurer; in my absence the treasurer might sign.

(By the CHAIRMAN:)

Q. Would the treasurer sign the certificates to himself?

A. He would in my absence; it requires two signatures.

Q. Did you sign a certificate to James W. Smith, treasurer, or certificates amounting to $3,000,000?

A. I don't remember whether I did or not.

Q. Did you receive any direction or authority to issue such certificate?

A. There was such an authority given by the board of trustees that such stock should be issued.

8896 Q. Have you any means of ascertaining now whether you signed any stock certificates in payment of the whole or in part for payments to be made in discharge of obligations of the constituent companies?

A. I signed no certificates except they were issued to shareholders of the company, or this one lot to the treasurer in trust.

Q. By the terms of the consolidation there was allowed as a deduction for the debts, various sums to various companies; for instance, the sum of $137,000, for debts owed by the Knickerbocker and assumed by the Consolidated Company, and by the terms of the agreement the Consolidated Company were at liberty to retain stock sufficient to discharge any such assumed indebtedness; can you tes-

tify, or have you any means of ascertaining whether you have signed any certificates for any such indebtedness?

A. I have not signed any such, to my knowledge and belief.

Q. There was allowed under that provision, and of the character of the allowances described in the previous question, the following sums: The New York Company, $6,000; the Metropolitan Company, $688,000; the Municipal Company, $328,000; the Knickerbocker Company, $1,137,000; The Harlem Company, $170,000; making in all a deduction of the debts from the share capital of $2,329,000; whether any of that stock has in fact been issued to anybody?

A. I will correct my answer; I believe that that amount which was issued included the amount set apart of the bonds as well as for the working capital.

Q. There was allowed under that provision and of the character of the allowances in the previous question, the following sums: The New York Company, $6,000; Metropolitan, $68,800; Municipal, $328,000; Knickerbocker Company, $1,137,000; Harlem
8897 Company, $170,000, making in all a deduction of the debts from the share capital of $2,329,000—has any of the stock been issued of the $2,329,000?

A. Yes, sir.

Q. Some of it has been issued?

A. Issued to the treasurer.

Q. Has it all been issued?

A. I don't know without referring to the books.

Q. Now what book will tell? Some of it has been issued; has it all been issued?

A. I will have to refer to the books.

Q. What books will tell?

A. The ledger of the Consolidated Company.

Q. The stock ledger?

A. No, sir, the general ledger.

Q. What place will tell that fact?

A. The capital stock account.

Q. Now in addition to that stock thus permitted to be withheld for a deduction for debts there was reserved for working capital, shares equal to $1,303,000—has any of that stock been issued?

A. I believe it to be included in the amounts issued to the treasurer.

Q. Now in addition to that stock thus permitted to be withheld for a deduction for the debts, there was reserved for the working capital, shares equal to $1,303,000—has any of that stock been issued—of the $2,329,000?

A. I think that is the amount, if I remember right, which was issued to the treasurer.

Q. Then, to the best of your recollection, all of the stock which it is entitled to issue thus under any circumstances, has been issued?

A. Unless there is some stock from the constituent companies which has not been sent in.

Q. Unless some of the stock due to shareholders has not been issued, then all the stock authorized to be issued has been, to your belief, issued?

A. Yes, sir.

8898 Q. Can you say how much of the $2,329,000 reserved for the deduction of debts has actually been paid off?

A. I think the $450,000 of notes due by the Knickerbocker and $170,000 of bonds of the Harlem have been paid off.

Q. Have the bonds of the Knickerbocker been taken up, all of them?

A. No, sir.

Q. Do you know the amount outstanding now?

A. The original amount was $750,000 of the Knickerbocker, $687,000 were outstanding at the time of the consolidation; there were some sixteen or seventeen bonds purchased on the 1st day of June, according to the trust deed of the Knickerbocker Company—this last June.

Q. Those two companies, the Knickerbocker, $450,000, and the Knickerbocker, $687,000, amounting to $1,137,000, which was reserved?

A. Yes, sir; out of that there was fifteen, sixteen, or seventeen bonds which were purchased under the mortgage-trust; every year there is a payment to be made on them.

Q. Has the indebtedness, $328,000 reserved for the Municipal Company, been paid?

A. A large portion of that was what remained of the first mortgage bonds of the Municipal Company, and those have not been paid; I don't remember what the balance was.

Q. How much was that large portion?

A. At the time of the consolidation it was about $291,000.

Q. Has that been paid yet?

A. No, sir.

Q. The balance of the indebtedness you think has been paid?

A. I don't know.

Q. The $687,000 of the Knickerbocker—no part of that has been paid?

A. No, sir.

Q. The New York Company's item of $6,000, has that been paid?

A. I am not positive; it was a mortgage on some piece of property.

8899 Q. You were a member of the committee of the constituent companies prior to the consolidation, was you not?

A. Yes, sir.

Q. How long did that committee exist?

A. I think about four years.

Q. Did the Mutual have a member of the committee?

A. Yes, sir.

Q. Who was he?

A. I think Arthur Leary.

Q. That committee kept minutes of its doings?

A. I don't remember.

Q. Was not you the secretary?

A. No, sir.

Q. Who was?

A. I think Mr. Smith.

Q. Do you remember when the values were under consideration by that committee in 1884, the values of the properties of the several companies?

A. I would like to state, there is a little confusion in regard to the committee; the committee the counsel is asking about now was not in existence for four years; the same set of men were of the committee you speak of; I received the values of the property and know they were in existence; I could not tell how long, probably six months.

Q. When did they begin?

A. I could not tell you; I think in the summer of 1884.

Q. They were the same men as the members of the pooling committee?

A. Yes, sir.

Q. You was a member of that committee?

A. I was.

(By the CHAIRMAN:)

Q. When you said you didn't know whether any records were made or not you then referred to the pooling committee?

A. Yes, sir.

Q. Don't you know that the minutes of the pooling committee have been in evidence, and many extracts made and put in this book?

A. I don't remember.

8900 Q. What did you call that committee?

A. I am not sure I was a member of the committee.

Q. Give the names of each one comprising that committee, which was formed in the summer of 1884?

A. Mr. Lees, Mr. Zollikoffer, Mr. Smith, either Francklyn or I—I can't say which—and either Mr. Leary or Kennedy—I don't remember which—and Mr. Morse.

Q. What did you call that committee—how was it styled?

A. I don't know as it ever had any name.

Q. What was the first thing that the committee did, to your knowledge?

A. I can't remember.

Q. The last thing?

A. The main business of the committee was looking out values of property, and talking about the matter of consolidation.

Q. What was the last thing the committee did?

A. I suppose the last action of the committee was *d*eporting upon the fact that they had arrived at a basis upon which the company would consolidate.

Q. Was that the basis upon which you did consolidate?

A. Yes, sir.

Q. How, in arriving at that basis, did you estimate the value, so-called, over and above the values, so-called, of the properties, rights and franchises of the constituent companies to the amount of $7,781,000, including the Mutual?

A. That was based upon the amount of business done by the companies, if I remember right.

Q. Give the particulars?

A. I don't remember.
Q. You mean the number of cubic feet of gas?
A. Of gas sold.
Q. How did you get at that—by taking the register, or index of the number of feet produced at the holder?
A. Not the index of the number of feet at the holder; we took the actual number of feet of gas sold.
8901 Q. You took the total amount of gas as reported from the consumers' meters?
A. Yes, sir.
Q. Did not that include street lamps?
A. I believe it did; they are the sales of the company.
Q. Is not that taken at the works, from the index for the street lamps?
A. No, sir; we take an estimate of each lamp.

(By the CHAIRMAN:)

Q. That gas consumed in the public streets is not measured?
A. No, sir, the contract provides that we shall furnish to each burner of a street lamp 12,000 feet each year.
Q. You took the gas product and measured that, not by indexes at the place of production, but by the meters of the consumers?
A. We did not take the gas product; we took the gas sales; that is not an intelligent question; leave out the word "gas product;" the gas made at the works and the gas delivered to the customers is a very different thing; if you will use the word "sales," that will be more intelligent.
Q. Whether the business was based on the product or receipts?
A. The receipts had nothing to do with it.

(By the CHAIRMAN:)

Q. What receipts had nothing to do with it?
A. The money received from the gas sold; the amount of dollars and cents did not enter into the question at all.
Q. State what did form that basis?
A. It was the sales of each one of the companies for a certain period.

(By the CHAIRMAN:)

Q. Measured a certain number of feet of gas?
A. Yes, sir.

(By the SAME:)

Q. Consumed on the streets of the city?
A. Yes, sir.
Q. There is a great difference between the amount of gas in the holders and that consumed?
A. Yes, sir; I should say the average of the difference was over fourteen per cent.
8902 Q. In making this basis for an estimate you did not take the product at the holders in arriving at the number of cubic feet?

A. I think not; all that matter you have in that book before you, I suppose; I have not refreshed my memory on this thing for months.

Q. Now having ascertained the business of each company, what was the next step in arriving at this figure, $7,781,000?

A. I don't remember.

Q. Don't you remember how it was done?

A. I do not.

Q. What was the process of arithmetical calculation?

A. I don't know.

Q. Have you any knowledge on that subject?

A. No, sir.

Q. Is your memory capable of being refreshed by any memorandum?

A. I should want the sales of each company for the time, whatever it was.

Q. Given sales for each company for a given period of time, what next?

A. Take the amount of capital over and above the valuations and apportion it.

Q. That is to say you agree on what the capital should be first?

A. No, sir; after the valuations were finished we did.

Q. And the difference between the valuation and the agreed capital was made the subject of estimate and apportionment among the various companies?

A. It was made the subject of apportionment among the various companies.

Q. And after that estimate and apportionment the amount arrived at was put down, and it was upon that basis which you have stated that the capitalization of the Consolidated Company was arrived at?

A. I believe that was so.

8903 Q. The original amount upon which this calculation was made was a capital of $45,000,000, including the Mutual?

A. I think so; I should have to see those figures to refresh my memory.

Q. Take this book (presenting book to witness).

A. Including the Mutual, $45,000,000, yes, sir.

Q. Then it is true that the figures found apportioned to the various companies, viz.: the New York, $1,417,000; the Manhattan, $2,329,000; the Metropolitan, $1,863,000; the Municipal $1,175,000; the Knickerbocker, $528,000; the Harlem, $469,000; comprising the amount of the capital apportioned by that agreement to the several constituent companies,—was the result of an estimate arrived at in the method you have described after the total valuations of the properties had been fixed at $29,994,000?

A. I think so; of course that did not come out in even thousands.

Q. Of course the valuations did not come out in even thousands and the fractions were disposed of by omissions or by adding to other items?

A. That is my impression.

Q. In some the fractions of thousands were made more, and in a few cases, less?

A. That is my recollection.

Q. Can you state whether a calculation was made fixing the percentage of the apportionment to each company for capital by reason of rights and franchises, etc?

A. I believe so.

Q. Do you remember those percentages?

A. I do not.

Q. Any of those calculations extant?

A. Not to my knowledge.

Q. Who had the papers upon which they were made, and who made the calculations?

A. That is a difficult thing for me to answer; no doubt that all of us did more or less figuring upon it.

(By the CHAIRMAN:)

Q. Did not some one have what papers there were upon
8904 which the figures were made?

A. Not the rough memoranda; there was nothing except the ordinary rough calculations.

(By Senator MURPHY:)

Q. A compilation made from those memorandums?

A. That is it.

(By Senator MURPHY:)

Q. The compilation was made from those fragmentary memorandums?

A. The basis was agreed upon some way on an ordinary calculation.

Q. The minute-book of that committee—where is it?

A. I don't know; I haven't seen it.

Q. Did I understand you Mr. Smith was the secretary?

A. Yes, sir.

Q. Will you ask him to hand that to Mr. Yalden?

Senator MURPHY: What do you mean by the minute-book?

Mr. TREMAIN: This committee kept a record of its doings.

Q. Did that committee keep any minutes of its meetings and its proceedings?

A. I don't remember.

Q. Who was its chairman?

A. Mr. Lees.

Q. Who was its secretary?

A. I think Mr. Smith; I wouldn't be positive.

Q. Did that committee agree to invite Mr. Rowland to make any appraisement?

A. Rowland made some appraisements and whether he was invited by the committee proper I don't know.

Q. Whether the committee agreed to invite Mr. Rowland to make some appraisements?

A. I don't know.

Q. Did the committee agree to discuss the propriety of inviting anybody to make the appraisements?

A. There was such a discussion.

Q. Did the committee come to any agreement as to how the real estate should be valued or by whom appraised?

A. I don't remember.

8905 Q. Was there any thing said by the committee on that subject, the appraisement of real estate?

A. Yes, sir, there was a talk about it, and whether the committee came to any conclusion I don't remember.

Q. Any thing said as to how the mains, meters and services should be appraised or valued?

A. Yes, sir.

Q. Was any conclusion arrived at by the committee on that subject?

A. I think the committee took charge of the valuation of the mains and services; I don't think it did have any thing to do with the valuation of the meters.

Q. Did the committee itself, without the aid of any experts or outside assistance, arrive at a valuation of the mains and valves and services?

A. I believe they did.

Q. Do you know how they arrived at that valuation?

A. There was a general discussion among the committee as to the value of a given sized main, say; and I suppose the views of the different members harmonized, and a valuation was reached.

Q. Was it on the basis of the cost?

A. I think not.

Q. Was it on the basis of the number of miles of mains actually laid?

A. No, sir.

Q. Did it, or not, include any mains that had been abandoned or unused, or that had been unused for a considerable period?

A. I presume not; I don't know that there are any such mains.

(By the CHAIRMAN:)

Q. You don't know that any abandoned mains were not taken into account?

A. I don't know of there being any abandoned mains any way.

(By Senator MURPHY:)

Q. You don't know of any existing at the time of the consolidation?

A. No, sir; I never heard of any.

8906 (By the CHAIRMAN:)

Q. Were there any unused mains at that time?

A. I think not, sir.

Q. You only know about the mains of the Muncipal and Knickerbocker Companies; do you know about any other mains?

A. No, I can't say that I did at that time, I do now.

By the CHAIRMAN:

Q. You don't recollect that any inquiry was made on the subject at that time?

A. I don't know; no such mains were in the amounts.

Q. Do you recollect whether there was any inquiry made at the time of the consolidation?

A. Yes, sir, there was; it would be a very natural one to make.

Q. Who made such inquiry?

A. I couldn't tell you.

(By Senator MURPHY:)

Q. The company would make such an inquiry if any existed?

A. Yes, sir; the abandoned mains would be taken up and used for other purposes.

Q. Presume there were abandoned mains, and if so the company would make a claim on the consolidation for their value?

A. I don't think there were; it would be a very easy matter for the old companies to show.

Q. Was there an estimate made before the committee to ascertain the value of the mains?

A. I don't know that there was; I looked into it myself for my own satisfaction.

Q. You assume that each company looked into the matter of the mains of such constituent companies?

A. I don't know how the others did.

Q. How was the value of the mains arrived at in dollars after you had ascertained the extent of the mains of each company?

8907 A. From the fact that it would cost so much to replace them; I think that is the way they were arrived at; I don't remember distinctly; I think that was it.

Q. As to meters, how was their value arrived at?

A. The price-list, I believe, of the manufacturer was taken, and enough added to that to cover the lead connection and meter-cocks that go with the meters.

Q. After getting the number of meters of each company?

A. Yes, sir; and the size.

Q. And as to the services, the valuation, how was that ascertained?

A. I believe the valuation was arrived at what it would cost to put a service of a given size in the ground.

Q. As to the bulk-heads, piers and water rights, how was that arrived at?

A. I don't remember.

Q. Do you remember what member of the committee gave special attention to that?

A. I do not.

Q. Office buildings, do you know how they were arrived at?

A. No, they went into the real estate; belonged with the real estate.

Q. A part of the real estate; have you given all the information you are able to give to the committee as to the methods of arriving at the value of the properties, rights and franchises of the constituent companies entering into the consolidation?

A. I think I have; yes, sir.

Q. Do you remember when in the summer this committee began to operate—this valuation committee?

A. I don't remember.

Q. About when?

A. I should think it was the early part of the summer.

Q. What else, after the committee got together, did they agree upon—what the combined capital should be?

A. No, sir.

Q. When was that done?

A. Some time toward the first of November, I should say from recollection.

8908 Q. Was it before or after the schedules had been prepared?

A. After.

Q. Was it before or after Rowland's reports?

A. I think that is answered in the previous question; the schedules could not have been prepared; I do not know that Rowland made any reports to the committee.

Q. Then the schedules you refer to are not the ones I refer to; which ones do you mean?

A. Those that are on the table; my recollection is no valuation of the capital was arrived at until these all were completed.

Q. Was not there a preliminary agreement of the consolidation that was prepared prior to the agreement which was finally executed and filed in the public offices?

A. You mean such a draft filed in the office of the company?

Q. No; prior to the time the form of agreement on file was made, was there not a preliminary agreement respecting consolidation?

A. I don't remember any such.

(By the CHAIRMAN:)

Q. Do you remember whether there was or not?

A. No, sir.

Q. Will you testify there was not?

A. To the best of my knowledge and belief I will.

Q. Was there any handed to the committee—I mean this valuation committee—or to the pooling committee that had been in existence, writings suggesting schemes of consolidation?

A. I believe there was—memoranda; no full agreement of any kind.

Q. Memoranda as to proposed basis of agreement?

A. No, sir; it was on a piece of paper written out.

(By the CHAIRMAN:)

Q. Memoranda of a proposed agreement proposed to be acted on?

A. There was some proposed discussions upon paper; there was no formal document.

8909 (By the CHAIRMAN:)

Q. Do you mean to say there was no memorandum, covering the scheme of the proposed consolidation, submitted to the committee

until the agreement was submitted, which was finally signed and executed?

A. Not that I recollect of.

Q. Do you not remember of the pooling committee passing a resolution to submit a plan as a basis for each of the companies entering the consolidation?

A. I do not remember.

Q. Was not you on such a committee yourself?

A. No, sir, I was not; I don't remember of any such committee.

Q. Do you remember who were?

A. I don't remember any such committee.

Q. Do you remember, at a meeting of the committee—the pooling committee—held November 23, 1883, the following resolution with regard to reporting a plan:

"*Resolved*, That the report and plan of the sub-committee on consolidation, as submitted at the last meeting, has the approval of the representatives of the New York, Manhattan, Municipal, Harlem and Knickerbocker Gas-light Companies."

A. I don't remember.

Q. Do you remember that there was a meeting December 17, 1883, at which the following resolution was passed:

"*Resolved*, That the plan for a consolidation accepted by this committee be referred as a basis to the committee of one from each company, to report a plan in full detail for the consolidation of all the companies here represented, with power to call in legal counsel, and that this plan be reported to this committee for approval on the call of the chairman."

8910 Do you remember that?

A. This subject of consolidation had been before the committee for a period of four years; I don't remember the occasion.

Q. Having refreshed your recollection by referring you to a copy of the minutes at pages 107 to 114 of the appendix to the Senate committee's report which was made last spring, I ask you whether you have at any time seen any of the papers that are referred to in these minutes as being reports of plans for consolidation?

A. I presume I saw those papers.

Q. In whose custody did you see them last?

A. I have not seen them since they were presented at the meeting.

Q. Who presented them at the meeting?

A. I suppose it is designated here.

Q. To whom were they presented?

A. I presume the chairman of the committee.

Q. His name was Lees?

A. Yes, sir.

Q. Have you any information as to where those papers are now?

A. No, sir.

Q. Have you heard those reports spoken of at any time since December, 1883?

A. I don't remember.

Q. Was there any committee appointed to carry out the resolution

that was passed December 17, 1883, or any means whatever adopted to carry it into effect?

A. I don't know, sir; the minutes would show if there was, I presume.

Q. You say that the minutes should show if there were?

A. Yes, sir; I have no recollection.

Q. At a meeting June 12, 1884, it seems to have been determined that the representatives of each company should submit schedules and plans of their respective companies—do you remember when that was first done?

A. I do not, sir.

8911 Q. Is there anybody else on this committee who would have any more accurate knowledge of its transactions than yourself?

A. In answer to that previous question if you will read the clause at page 114——

Q. I have.

A. I do not remember with the exception of that; I don't know as to the last question.

Q. Are there any other papers upon the subject of consolidation by way of a proposed preliminary agreement, that are in existence, or in any way relating to the consolidation, that were made prior to November 10, 1884, that you know of, anywhere?

A. Nothing, except those.

Q. Or are there any such papers in existence that you have any information of, anywhere?

A. No, sir.

Q. Do you know of any such papers having been destroyed?

A. No, sir.

(By the CHAIRMAN:)

Q. Or have you heard of their being destroyed?

A. No, sir.

Q. Did you see any such papers in Mr. Lees' hands at any time?

A. I saw nothing in his hands except what were in the committee.

Q. Did you see any such papers in James W. Smith's hands at any time?

A. No, sir.

Q. Did you see any such papers in Mr. Francklyn's hands at any time?

A. Not more than any of the others; I don't remember any such papers; I would like to state in regard to the question of what General Tremain calls the committee on valuations; I testified it was in the summer of 1884; I am a total blank as to the date; I see in referring to the pooling committee that the subject was up in that committee right along; I may be all wrong about it.

8912 Q. The business that the committee had to do with the adjustment of values was entirely separate as to the values of the committee of the pooling agreement?

A. I believe they were.

Q. You were one of the trustees under a trust agreement with the Municipal, dated March 23, 1880?

A. I was one of the trustees; I don't remember the date.

Q. You, together with Francklyn and Ottendorfer, Allen and Day, assigned 14,995 shares in the Knickerbocker Company?

A. Yes, sir.

Q. You voted on that stock?

A. Yes, sir.

Q. What did you do with that stock?

A. That stock was assigned to the holders of the Municipal Gas-light Company as their interest may appear.

Q. When was that done?

A. About the time of the consolidation.

Q. Was it made in one certificate?

A. Yes, sir.

Q. To whom was the certificate assigned?

A. To the shareholders of the Municipal Gas-light Company as their interest may appear.

Q. Was that the way the certificate was assigned?

A. Certainly; the assignment was made to the people to whom it belonged, and the certificate went with it.

Q. Do you mean to say that the trustees executed a written assignment?

A. That is my recollection of it.

Q. What was done with the certificate itself?

A. It was canceled first, and I suppose it is at No. 4 Irving place.

Q. You were the secretary of the Municipal Gas-light Company?

A. No, sir.

Q. Were you not?

A. No, sir.

Q. Who was the secretary?

A. Philip Allen.

Q. Were you an officer of the Knickerbocker?

A. Yes, sir.

8913 Q. The president?

A. Yes, sir.

Q. When was that certificate, 14,995 shares issued?

A. I could not tell without referring to the books.

Q. Well, do you know what year?

A. My impression is it was 1880; I am not quite sure.

Q. Who issued it—whom was it assigned by?

A. I don't remember.

Q. When was this assignment, that you speak of, made?

A. About the time of the consolidation.

Q. Who signed the assignment?

A. I suppose the trustees, but I don't know.

Q. You signed it for one?

A. I think I did.

Q. Mr. Day signed it?

A. I don't know.

Q. When was the last meeting of the board of directors of the Knickerbocker Company?

A. In the early part of November, 1884.

Q. Have you the record of that meeting?
A. I have not.
Q. Where is it?
A. I suppose at Twenty-sixth street and Fourth avenue, at the Municipal office; I have not seen it since last spring.
Q. You agreed to the valuations of the Knickerbocker Company as they are stated in the articles of agreement of consolidation?
A. I did.
Q. You signed for the Knickerbocker Company?
A. Yes, sir.
Q. How did you get at the value of the real estate, $480,000?
A. My recollection is we took the values of the surrounding property there.
Q. Who made the valuations?
A. I think Francklyn and I.
Q. Who made the valuation of the Knickerbocker plant?
A. Mr. Rowland.
Q. Who else besides Mr. Rowland?
A. I don't remember.
Q. Who furnished the figures to Rowland upon which he
8914 made his estimate of the valuation of the plant?
A. I have never heard of any figures being furnished him?
Q. Are you sure about that?
A. I never heard of any figures being furnished him.
Q. Do you know, or do you not, that figures were furnished him?
A. I would be perfectly willing to testify no figures were furnished him; a schedule was furnished.
Q. Did that schedule, representing the figures, represent the cost in the valuation of the items on the schedule?
A. Not to my knowledge.
Q. Who gave him that schedule?
A. I don't know.
Q. Did you?
A. I might have done it.
Q. Did you prepare the schedule.
A. No, sir.
Q. Did anybody else make these values?
A. Using Rowland's name, representing himself and his staff, I would say.
Q. You mean by your testimony to imply that possibly Rowland's representatives may have made figures?
A. They may have.
Q. You don't know whether Rowland made the original figures himself, or simply revised them?
A. I do not know the fact.
Q. How did you get at the value of the services?
A. We knew how many there were, and in one of these two committees an agreement was reached as to the value of each service.
Q. What was that agreement?
A. I don't remember; those books will tell it all.
Q. No; they will not show any such agreement; they show the

value of the services as finally agreed upon, but they will not show the basis as to which the services were estimated.

A. I don't know.

Q. You have stated each company knew just what the
8915 services were; how did you get at that figure, $181,000, in the Knickerbocker?

A. By the actual record of the number.

Q. How did you get at the figure, $181,000?

A. The price per foot was agreed upon.

Q. What was it?

A. I don't know; that book will show you, if I am not mistaken it will show the record of the services; there is the number of each size that the company has, and the price they were put in at. (Handing the book to the Chairman.)

Q. You refer now to the Knickerbocker only?

A. Yes, sir.

Q. Was it at the same rate by which all of the other companies' services were estimated?

A. Yes, sir.

Q. How much did you say it was?

A. So much for one size, and so much for another.

Q. How did you get at the value of the meters in the Knickerbocker at $69,000?

A. Took the list price and added to it the cost of the lead connections and the cocks.

Q. Was that the way the price was estimated with all the companies?

A. Yes, sir.

Q. How did you get at the figures $744,000 in the Knickerbocker for the price of the mains?

A. The price of each sized main was agreed upon, and we knew the number of feet.

Q. How did you get at the figure $115,000 for bulk-heads, pier and water rights?

A. I don't remember.

Q. About the Municipal—how did you get that item in that valuation of bulk-heads, piers and water rights—$200,000?

A. I don't remember.

Q. How did you get the item of the valuation of the real estate, $889,000?

A. That was done from the valuation of the surrounding property.

8916 Q. Who made that valuation?

A. I think Mr. Francklyn and I.

Q. Who made the valuation of the plant of the Municipal Company, $1,804,000?

A. I find here the valuation $1,797,527 made by Mr. Rowland.

Q. Did anybody else make any valuation of the plant?

A. Not that I know of; not that I can recollect.

Q. How did that figure become $1,804,000? Do you know?

A. I do not.

Q. I refer to page 30; how do you explain that difference?

A. I can't explain it, sir.

Q. How did you get at the value of the services in the Municipal at $103,000? The same as you did in the Knickerbocker?

A. Yes, sir.

Q. And of the meters the same?

A. Yes, sir; there is only a difference of $7,000 and not $20,000.

Q. Yes; can you explain that last item, $6,000?

A. We had two photometer rooms, and quite an expensive laboratory.

Q. Did you ever see Mr. Rowland's valuation of those rooms of the Metropolitan, or of the Manhattan?

A. No, sir.

Q. Or of the New York?

A. No, sir.

Q. You observe your valuations of those items is larger than theirs?

A. Yes, sir.

Q. Any explanation to make?

A. The laboratory is much more expensive; I don't know about his valuation of their laboratory; the laboratory is pretty expensive, and that is the chief part of this item.

Q. Where are the original stock-books of the Knickerbocker?

A. I think at 360 Fourth avenue.

Q. Of the Municipal, extending back to 1865?

A. At the same place; I don't know as to that length of time; extending to 1877.

8917 Q. The stock-books of the Municipal, are they to be found there?

A. They are there, at Twenty-sixth street and Fourth avenue.

Q. Have you the stock books of the Knickerbocker since the organization of that company?

A. I don't know how far they go back; I have all that were turned over to us at the time the purchase was made in 1880; I think they are at Twenty-sixth street.

The committee hereupon adjourned to Wednesday, November 25, 1885.

NEW YORK CITY,
FIFTH AVENUE HOTEL, *November* 25, 1885.

The committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the committee.

SAMUEL SLOAN, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are one of the directors of the Consolidated Gas Company?

A. Yes, sir.

Q. And prior to that which of these constituent companies was you associated with?

A. The Manhattan and New York.

Q. Were you a director in both?

A. Yes, sir.

Q. Were you a member of any of the committees that were formed for the purpose of taking into consideration the question of consolidation, prior to November, 1884?

A. No, sir.

8918 Q. Were you interested in any other of the constituent companies than those two?

A. No, sir.

Q. Since the organization of the Consolidated Company on what committee have you acted?

A. I am on the standing committee; the executive committee.

Q. And any others?

A. No, I think not, sir; I am on the standing executive committee; there are special matters that have been referred to special committees, one I think, now in existence; I have been on that committee; we call it the working and manufacturing committee; it is appointed looking to the reduction of expenses and economy of manufacture.

Q. Who comprised that committee?

A. Mr. Pyne, Mr. Day, Charles G. Francklyn and myself.

Q. Are there minutes of that committee's work?

A. Yes, sir.

Q. Who has them?

A. Mr. Gawtry.

Q. Minutes of their meetings?

A. Yes, sir; I refer to that, sir.

Q. Where did that committee meet?

A. They have met at the directors' room of the City Bank for the convenience of the committee down town.

Q. Do you remember when their first meeting was, about what time?

A. No, I do not; I think we have been two or three months—I am not sure about it—going on with the work.

Q. Did that committee make any written reports to the board of directors?

A. They reported one report.

Q. When was that?

A. I think the September or October meeting—I forget which—the September meeting.

Q. They made other reports verbally, didn't they?

A. Yes, sir; and asked to be continued; some difficulty in 8919 the way of getting what we wanted.

Q. On what special topic did they report—which was in writing?

A. It was our intention as fast as possible to reduce the expenses and economize generally in the management of the company; some questions arose as to dispensing with one of the works, looking to that object, and otherwise reducing the expenses of the company.

Q. Was there any plan of reduction in writing submitted to your committee?

A. Yes, sir, two; ex-President Roome and Mr. Zollikoffer gave their views.

(By the CHAIRMAN:)

Q. In writing?

A. Yes, sir.

Q. Who has those papers?

A. I think the chairman of the committee, Mr. Pyne, must have them.

Q. You think Mr. Gawtry has that written report of the committee?

A. I think he has as secretary.

Q. Mr. Gawtry did not remember any thing about any thing that that committee ever reported; what other subject-matter, if any, was before that committee on work and manufacture?

A. Nothing else; the object of the consolidation was to cheapen the production of gas and its distribution; that matter has been before us more or less, and resulted in the appointment of this committee, and that committee met with a difference of opinion between the ex-officers, but that committee submitted their report in writing as far as they could, and they still have the matter in charge, intending to cut down expenses in other ways.

Q. So far as you have gone, the reduction in the expenses is effected in what ways?

A. It is not effected to satisfy me; we really had not accomplished any thing as I would have wished.

8920 Q. What have you accomplished?

A. This report was laid upon the table and has not been acted upon yet; one of the points at issue was the closing of one of the companies to lessen the expense which would be required to keep the works running, and which at that time we thought was not justifiable, and the matter was laid over on that account.

Q. Then it is not yet decided whether that work, whatever it is, will be suspended or not?

A. The committee reported that the large expenditure required at this time did not justify taking the matter up.

Q. As a matter of fact have you suspended any of the works?

A. No, sir, we did not consider it safe to do so.

Q. I understood you to say that it was the object of the consolidation to secure cheap gas?

A. That is my object.

Q. Please explain to the committee how, if that was the object, it was aided in its purpose by increasing the capital stock?

A. The capital stock in the adjustment between the companies the values of the respective properties, was put in upon the statements which the respective interests agreed upon in this committee which had charge of the matter; of course the larger the capital the less dividends to be expected.

Q. What was the price of the Manhattan in 1884?

A. I could not recollect; I think the Manhattan went up over 300.

Q. Three hundred and twenty in the fall of 1884?

A. I don't recollect; I have been in the Manhattan and New York, and keep my interest yet, and was satisfied with my investment; but in the consolidation we looked for the cheapening of gas in a large output.

8921 Q. The price of the Manhattan during the summer of 1884 was between 300 and 320?

A. My memory don't serve me.

Q. What would be the proper way for the committee to ascertain the price of that stock during the summer of 1884?

A. I suppose the price in the stock list.

Q. Was it listed always?

A. I think so, but I am not sure about that.

Q. If we should call a broker accustomed to dealing in that kind of stock we will have no difficulty in making it out?

A. I think not.

Q. How would an increase of capital of the combined companies from about $17,000,000 to about $39,000,000 aid in furnishing cheaper gas to the public?

A. The output would be greater and we would have to take less dividends and probably less profits, and the capitalist would not do as well as he did before; but it was really to meet the outcry about the price which was the chief object.

Q. I think there was a surplus of the manufactured plant in the city of New York on the 11th of November, 1884?

A. I am not prepared to say that; we always thought that with the Manhattan and New York every new company was bothering and interfering with us.

Q. Do you mean to say that the capital stock was increased from $17,000,000 to $39,000,000 for the purpose of satisfying the popular outcry against the high price of gas?

A. I mean to say that by the consolidation of interests we thought the values were properly adjusted; I don't think that by capitalization there is more to be done.

Q. Your answer is not to my question?

A. I should say the capitalization power simply is not what we relied upon for the cheapening of gas.

8922 By the CHAIRMAN:

Q. Very well, that answers that; let me ask you whether, in your judgment, on the 11th of November, 1884, there was more gas plants in and for the city of New York than was needed, and than could be economically worked?

A. I think there was.

Q. There was more capital invested in the manufacture and distribution of gas on the 11th of November, 1884, in the city of New York than was nececsary?

A. In one sense there was, and in another sense the same capital put with all the works consolidated would have worked more economically.

Q. I mean in a plain business sense?

A. No, sir.

Q. There was more capital invested in the manufacture and distribution of gas on the 11th of November, 1884, in the city of New York than was necessary for the economical supply of the city of New York with gas?

A. No, sir. I think not.

Q. If there was more plant at that time than was needed, how can it be that there was more capital invested in the business than was needed—will you explain that?

A. I cannot explain that.

By Mr. TREMAIN:

Q. Will you explain how it tended to cheapen the supply of gas to the consumers of the city by capitalizing the so-called Harlem properties and franchises at $3,000,000?

A. I know nothing about the details of the adjustment; I am simply a director, and was not on the committee, and voted the report of the adjustment committee.

Q. As a director of the Manhattan and New York, you simply voted?

A. Yes, sir; accepting that adjustment.

8923 Q. Then there was a report in writing of the adjustment committee?

A. I think there was; some action that brought it about; I am not sure about it, because when the board of directors meet once a month these papers are put before us and we act upon them at the time.

Q. What papers upon that subject were put before the board of directors of the Manhattan during the early part of the year 1884?

A. I don't recollect.

Q. Do you recollect of any papers being put before the board of directors at any time in 1884?

A. No, sir.

Q. Do you remember of attending any meeting when that subject was up before them on that matter?

A. I attended pretty generally all the meetings.

Q. Did you ever see any papers on that subject?

A. The usual course of the proceedings at the board meeting was for the officers to present their views, and whatever was brought before us we acted upon; I don't recollect what, for I don't charge my mind with those matters.

Q. There appears to have been filed in the Secretary of State's office an agreement of consolidation that is dated September 29, 1884, which says: "The directors or trustees of the company shall enter into this agreement and the stockholders shall, on or before November 10th, 1884, sanction and approve this agreement by a vote of two-thirds of the stockholders"—and it appears to have been executed by the Manhattan Gas-light Company, and to have been approved at a meeting of stockholders of the Manhattan Gas-light Company, November 5th, 1884; were you present at that meeting?

A. No, sir.

Q. You gave your proxy to somebody else to vote upon it
8924 at that meeting, didn't you?

A. I presume I did; I usually do such things.

Q. To whom did you give it?

A. I don't recollect.

Q. Did you ever read or see that agreement?

A. I don't think I read it; I presume I saw it.

Q. Did you ever see any other paper on that subject?

A. I have no recollection other than the resolution usually passed under such circumstances.

Q. Did you ever see any memorandum or calculations of the respective values of the properties of the various companies, or estimated values?

A. I don't recollect except incidental conversation and I couldn't call that to mind as to what that was.

Q. Then, if I understand your testimony, you say you don't recollect having seen any paper on that subject?

A. No, I do not, and yet I may; but I would not like to swear I have seen it; still I may have seen it.

Q. Were you a member of the pooling committee?

A. No, sir.

Q. You received Consolidated stock for Manhattan stock at the rate of 2.98½, did you?

A. At the rate that others received it, sir.

Q. How long have you held your stock in the Manhattan?

A. I couldn't tell you; I bought the first shares from Moses Taylor years ago, went into the direction, and added to my interest afterward.

Q. Is it in your opinion a fair item in fixing the price of gas to consider a reasonable dividend upon stock as an element?

A. I do, sir.

Q. If that is the case how does it tend to lessen the price of gas to consumers if a reasonable dividend is to be paid upon a cap-
8925 ital of $39,000,000 instead of $17,000,000?

A. It depends upon the result of the new action; we cannot determine that without trying it.

(By the CHAIRMAN:)

Q. That is your answer to that question?

A. Yes, sir.

Q. That is as full an answer as you can give—that is as well as you can explain it?

A. Yes, sir.

Q. Has any thing been accomplished in that direction?

A. I am sorry to say, very little; I am hopeful, though.

Q. Upon what grounds have you hope?

A. I cannot answer that question without personally consulting some of my associates.

Q. Why was it necessary to make a consolidation such as was made for the purpose, as you think, of cheapening gas? Why could not that same object have been accomplished by the several companies without this consolidation upon such a basis?

A. I really believe it could; the difficulties that are in the way of consolidating the property—I think it could have been accomplished quite as well one way as the other; it remains to be seen, however.

Q. Asking your opinion and judgment, rather than evidence as to the fact, and for the information of the committee, is there, in your opinion, any public purpose to be subserved by maintaining the present capitalization of the so-called Consolidated Company?

A. Certainly there is, yes, sir; this capitalization you speak of has a capitalization of values properly adjusted; the property has been adjusted, and its values have been fairly adjusted between the respective companies.

Q. I didn't ask that.

A. I only wished to be permitted to make my explanation.

Q. I asked your opinion as a public-spirited citizen, whether
8926 you thought there was any public purpose to be subserved by maintaining this present capitalization?

A. I do; I think it will work its way out in the end; but it is a tedious route; there is a great deal to go through with.

Q. Do you think it is fair that the public should be charged as an element in the price, a seven per cent. dividend on $39,000,000?

A. I do, if that is the present capitalization, and if the company has earned it.

Q. Do you know how the valuations of these various properties were arrived at in the consolidation?

A. I don't know the detail.

Q. Was not it explained to the board of directors of the Manhattan?

A. The board had a committee on adjustment of the interests of each, and they were months arriving at its adjustment.

Q. When did that begin?

A. I couldn't tell you; several months ago.

Q. It begun before the act authorizing the consolidation was passed, did it not?

A. I think they were justified in the laws as they then existed.

The CHAIRMAN: Strike out the answer to the last two questions and take a new answer to each question.

The WITNESS: Through the medium of the adjustment committee, that is my answer.

The CHAIRMAN: That is not the principal question.

The WITNESS: The adjustment committee which was appointed, one from each interest, met from time to time.

Q. You are answering the questions as if asked through whom these adjustments were effected—the question is how it was effected.

A. I couldn't tell in any other way except through the committee; they made their report in proper time, and the board acted upon it.

8927 Q. That is not an answer.

A. I couldn't tell; I don't know how it was; I was not on the committee.

Q. Did not the committee which was appointed for that purpose

make a report to the board of directors of the Manhattan Company indicating how it was done?

A. I am not aware of any report being made; the facts in a general way may have been stated, and I thought it was best.

Q. What facts were stated?

A. I don't recollect.

Q. How heavy was your interest in the Manhattan and the New York?

A. I forget what they were respectively; in the consolidated interest I think I have about one thousand shares.

Q. Whether having an interest as heavy as you have just described in these two companies you have approved and voted for consolidation without any knowledge at the time of the basis of the capitalization that was agreed to. Do you want the committee to understand that?

A. No, sir.

Q. I did not suppose you did. Now have you any recollection of the basis?

A. I have not, sir.

Q. Please tell the committee who are the men who will explain that basis to the committee from actual experience?

A. I suppose the officials of the respective companies.

Q. Name them—whom you refer to.

A. The president of the Manhattan and the president of the New York—General Roome and Mr. Lees ought to know.

Q. Did General Roome represent the Manhattan on the committee of adjustment?

A. It was Mr. Smith.

Q. Do you know who represented the Knickerbocker in that adjustment?

A. No, sir.

Q. Or the Municipal?

A. No, sir.

8928 Q. Or the New York?

A. I think Mr. Lees did.

Q. Do you know who represented the Harlem?

A. I do not.

Q. The Metropolitan?

A. I think Mr. Zollikoffer; I don't know that, but I think so.

Q. Have you been on the finance committee, or any committee of the Consolidated, whatever?

A. The executive committee only.

Q. Will you please tell the committee what was the necessity of an executive committee authorizing loans and pledging the securities of the Consolidated?

A. The duties of an executive committee—they are the working committee; when the officers require any instruction they usually get it from that committee.

Q. Do you remember about any loans being authorized?

A. No, sir, not now.

Q. Some loans were authorized, the records show?

A. Yes, sir, whatever they were.

Q. Some of them were to pay for the debts of the old companies?
A. Yes, sir; and I guess the most or all of them; the bonds of some companies have been paid, I think; I am not sure about that; the treasurer can tell.
Q. If you recollect the purpose for which the authority was given to raise these loans?
A. For that purpose I should think, the last loan was for the payment of bonds, I think, I am not sure; no, I don't think it was—the minutes will show; my memory may be at fault.

(By the CHAIRMAN:)

Q. Have you any recollection of the purpose for which either of the three loans were effected by the officers of the Consolidated Company?
A. I think it was for the adjustment of the different interests, the payment; and I am not sure but what they had to borrow some money as it stood then for the first dividend; I am not sure about that.

8929 (By the CHAIRMAN:)

Q. Have you now any distinct possible recollection on the subject?
A. I have not.
Q. Were you present when the dividend was declared?
A. Yes, sir.
Q. Was there any report read before the board upon which it voted a dividend?
A. The general statement was made that the dividend had been earned.
Q. Has no officer presented any report upon that subject?
A. I don't think there has.
Q. You are aware that the Harlem works have been shut down?
A. Yes, sir.
Q. Is it the purpose to close any others?
A. I couldn't tell you; we are agitating it.
Q. Is it the purpose to sell the Harlem properties?
A. I don't know.
Q. You have not made any loan to the Consolidated?
A. No, sir.
Q. Has your bank?
A. No, sir; where I am a director they have; that is done by the officers; I know nothing of the details of it.
Q. You are not on the committee there?
A. I am a director only; the officers do as they please.
Q. What officers make these loans?
A. The president and cashier.
Q. Name them.
A. Mr. Pyne and Mr. Palmer.
Q. I want to repeat a question to you and ask you whether you wish this committee to understand that owning as you do a substantial block of stock in the Manhattan and New York Companies, and being a director in both of them, you voted for and approved, and promoted this consolidation, without ever having examined any

paper by way of report, or otherwise exhibiting the properties and proposed values of the constituent companies that were to
8930 compose it, and the basis upon which the consolidation was had?

A. I do, sir; emphatically.

Q. In that respect you relied upon the judgment of your associates?

A. Yes, sir.

Q. Whose judgment did you rely upon in that respect?

A. I don't think that I could say that exactly; I relied generally upon those that I associated with—the other directors of the Manhattan and the New York—and then the market values of the securities; it is a question with me whether I shall sell my stock or continue in a general way.

Q. Will you designate by name the associates you relied upon?

A. I had rather not do that; I rely upon my own judgment generally rather than upon anybody else.

Q. Well, now assuming the value, at the time, of your Manhattan stock to have been 320, and that the proportion of the consolidated stock you received for the Manhattan was, as shown by the books, 298½ for each share of the Manhattan, and assuming the price of the consolidated stock at that time, immediately after it was listed, to have been about eighty-four, which is the price at which it was quoted, there would have been an actual loss on every share of the Manhattan which you exchanged, of 215; explain how that transaction happened?

A. I may have made a great many mistakes; that is one that might have happened; I looked at the future of the enterprise and its results; it may not be as I anticipated; the future must take care of that.

Q. Did not that future depend upon a dividend upon the consolidated stock, and an enhancement of the price of the consolidated stock above eighty-four?

A. Well, that would be a natural consequence.

8931 Q. Do you want the committee to think that it would be your judgment in favor of the consolidated stock at that time?

A. I don't think I thought very much of those circumstances then; I went into this thing with a hopeful view as to the future; it would have been better for me to have sold at 320 those stocks and gone out.

Q. As a man of experience in large affairs, and particularly in gas companies in the city of New York, will you tell the committee whether in your opinion the present situation is calculated to reduce the price of gas to consumers?

A. I think it will if we are permitted to go on with our enterprise and make the necessary economies and changes which will develop themselves.

Q. None of which have been made this past year.

A. No, sir; we have not had much else to do but wait upon your honorable committee.

(By the CHAIRMAN:)

Q. You mean by that that you have been preparing for this examination?

A. No, sir; but their time has been taken from their duties.

Q. Preparing for this examination?

A. No, sir; it don't require any preparation.

Q. But not much time has been taken in actual attendance before the committee; it must have been in anticipation of it?

A. Oh, no; perhaps I ought not to have made such a remark, Mr. Chairman; the officers have complained of being called away.

The CHAIRMAN: Such a statement should not have been made to the committee.

The WITNESS: I beg to withdraw it, Mr. Chairman.

The CHAIRMAN: It is withdrawn.

Q. Do you expect a ten per cent. dividend on the consolidated stock?

A. No, sir.

8932 Q. Do you expect a seven per cent. dividend?

A. I don't know; I hope so.

Q. You paid three and one-half per cent.?

A. Yes, sir.

Q. Do you know whether a dividend in December is warranted?

A. That is my impression; I hope so, at least.

Q. If you are aware that in order to pay a dividend of ten per cent. for the first year, one and a half millions in economics to which you have referred would have to be attained, would it in your judgment be practicable?

A. No, sir; I don't think it is practicable or reasonable.

Q. You can't get any such economics, can you?

A. No, sir.

Q. Before a dividend is declared is it or is it not reasonable, in your opinion, to allow a certain sum for depreciation of the plant?

A. Yes, sir.

Q. Are you aware that that has not been done?

A. I would be under the impression it was done; well-managed companies would always do that.

Q. Do you know whether it was done?

A. I do not.

Q. As a director you would insist upon its being done if you had the power?

A. I don't know.

Q. That would depend upon circumstances?

A. Yes, sir.

Q. Have you any papers at all relating to this consolidation?

A. None whatever; I attended the monthly meetings and heard the statements and worked for the dividends.

(By the CHAIRMAN:)

Q. If instead of making the proper allowances for the depreciation in the value of the property of the company which would in effect reduce the dividend, and the company should neglect to do that,

and should borrow money which would in effect diminish
8933 the dividend, would that be conducting the business, in your judgment, according to a legitimate business method?

A. No, sir; I would say I got into this thing in good faith looking at it in the light of an investment rather than the diminishing of the price of gas.

The CHAIRMAN: The stenographer will please note that yesterday the minute-book of the finance committee was produced by Mr. Gawtry, and left with the Chairman.

OSCAR ZOLLIKOFFER, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are a director in the Consolidated Company?

A. Yes, sir.

Q. And what officer are you?

A. Chairman of the executive committee and second vice-president.

Q. And also manager of the Metropolitan branch?

A. No, I have not been appointed yet; I generally take charge of it.

Q. You are president of the Metropolitan?

A. I was.

Q. You was also a member of the pooling committee from 1880 until the time of the consolidation?

A. Yes, sir.

Q. Was you also a member of the committee on consolidation that was formed in the year 1884 with a view of consolidation?

A. Yes, sir.

Q. Who are your associates on that committee?

A. One from each of the other companies.

Q. Name them.

A. Mr. Smith for the Manhattan, Mr. Lees for the New York, Mr. Moss for the Harlem, Mr. Gawtry for the Knickerbocker, and Mr. Francklyn for the Municipal.

8934 Q. Did anybody represent the Mutual?

A. Mr. Kennedy for a time, but not to the end.

Q. Who represented the Harlem?

A. Mr. Moss; I don't know exactly whether he was regularly appointed, but he attended the meetings as such.

Q. What did they call that committee?

A. The pooling committee.

Q. No, the other committee.

A. I don't know of any other name that they have.

Q. During the sessions of the pooling committee do you remember plans of consolidation having been under discussion?

A. They were repeatedly.

Q. Do you remember any written plan of consolidation?

A. Not at all well—there were minutes kept in the regular minute-book, and they submitted also papers—statements.

Q. What was the first paper of that kind that you remember of?

A. I would have to look over my memorandum before I could give any correct reply; they were considered, as much as I know, to be kept by Mr. Smith, who acted as secretary.

Q. By that you refer to what?

A. The minutes of the daily proceedings.

Q. In addition to the minutes, were there statements of valuation?

A. I took a copy for myself from the statements; the same as you find submitted from them; mine is only a copy for myself.

Q. When was that?

(Witness here presented a book to the counsel.)

Mr. TREMAIN: Witness produces a book and states that it is a copy which he retained for himself.

The WITNESS: The different values of the Metropolitan Company—the property and values as they existed before the consolidation.

8935 Q. And according to the schedules that have been submitted here?

A. I am not positive that every thing has been agreed finally as to the value to the same point, but I suppose it was.

Q. I wish to ask your best recollection about any plans of consolidation that you remember having seen or heard read anterior to the preparation of these schedules?

A. There were so many, and I have differed with so many, that I don't know exactly which were adopted from time to time; the minutes must show all that.

Q. The minute-book of the pooling committee shows that there was before the consideration of the committee with a view to consolidation in the year 1884, and also in the year 1883, one or more plans of consolidation—do you remember that?

A. Yes, sir.

Q. Do you remember who had those writings—was it not Mr. Smith?

A. Mr. Smith.

Q. Have you personally any of those writings or plans, or copies of them?

A. I may have; I don't know for certain; I would have to look over again my drawers or papers.

Q. You understand now what papers I allude to?

A. Yes, sir; it must show them to be in the hands of Mr. Smith; he has been secretary of that committee.

Q. If you have any copies you will produce them subsequently?

A. Yes, sir.

Q. Will you please refresh your recollection by looking at Exhibit "C 1," and say whether you have ever seen that before? (Book shown witness.)

A. I suppose that is an exact duplicate.

Q. Of what you have produced?

A. I suppose so.

Q. Have you Mr. Rowland's certificate?

A. I think we have; I must see my son who keeps those
8936 papers; I suppose it was given either at the office of the Consolidated or in the office of the Metropolitan branch; I think it is correct in the duplicate, as much as I recollect.

Q. I observe exhibit "C 1" bears date August 5, 1884, and Exhibit "C 2," a recapitulation of it, bears similar date?

A. Yes, sir.

Q. Do you remember how long before August, 1884, these schedules were prepared with a view to consolidation?

A. For several months; I could not agree at once—they negotiated for several months, but I couldn't tell exactly for how long.

Q. The schedules that were the subject-matter for final consolidation were prepared several months prior to August, 1884?

A. Negotiating or agreed about—agreed on one part and then another part; in that way.

Q. Agreed on different items?

A. Yes, sir; one company and then another company.

Q. The schedules of the companies were agreed upon several months before they were acted upon in November?

A. Yes, sir.

Q. They were the subject-matter of negotiation?

A. Yes, sir.

Q. Was not each company informed of the properties of each of the other companies by these schedules in whole or in part, for the purpose of consolidation?

A. Yes, sir.

Q. Were they not informed also of their values?

A. Yes, sir, in the same way.

Q. Do you now remember that that was the case as early as the year 1883?

A. I could not possibly say; maybe the negotiation was planned unknown to me for a long time, but I couldn't say how long.

Q. Allow me to refresh your recollection by calling your attention to a part of the proceedings at a meeting of the pooling
8937 committee in December, 1883. (Reading from a resolution.) Can you now not say that the schedules as the basis for consolidation exhibiting the properties and their values, were prepared during the year 1883, and submitted?

A. A similar resolution was passed at the pooling committee, and the minutes ought to show it.

Q. These are the minutes?

A. I know that such a thing was passed, but I don't recollect the date.

Q. When that resolution was passed had not these schedules been prepared?

A. I don't think so; I think they were afterward prepared.

Q. Had not something been prepared exhibiting the values of the properties of the various companies?

A. Maybe; I don't know exactly when; a great many statements were submitted and we could not agree upon them, and then they would come up again until they were finally agreed upon.

Q. When were they finally agreed upon—was it when this resolution was passed?

A. There was a resolution that we should try to consolidate but there was no values fixed; nothing of that kind; nor particulars arranged.

Q. With that exception it was substantially agreed upon in December, 1883?

A. I did not consider it agreed upon until I consented to it and I never consented to it except on the final.

Q. Please look at Exhibit "C 2," and tell me whose writing that is?

A. A part of it is my writing.

Q. What is that paper?

A. A preliminary paper; whether this was adopted or not I couldn't say without comparing notes together; at home; but this paper was submitted.

Q. It was dated August, 1884.

(By Senator ROBINSON:)

8938 Q. Did not other companies submit the same kind of figures to you during 1883?

A. I suppose so; I have not the least doubt but they did.

Q. And submitted them to your company?

A. No, sir; to the pooling committee.

Q. Of which your company had a representative?

A. Yes, sir.

Q. This estimate of their value of the different companies was submitted to the pooling committee as early as 1883?

A. Yes, sir; this is August, 1884.

(By Senator ROBINSON:)

Q. Is it your recollection that that is the first paper that you submitted to this pooling committee?

A. No, sir; from time to time I submitted one or another; this is only one; I don't know whether we had some before or after.

Q. This was submitted in August, 1884?

A. Yes, sir.

Q. Whether or not you submitted any of that kind before August, 1884?

A. I couldn't tell; I would have to look over the papers.

Q. I find on another exhibit that you had a meeting as early as 1883; I find you was present at a meeting in December, 1883, for a plan of consolidation of these companies?

A. Yes, sir; I was present.

Q. Up to that time had not you drawn some of these schedules, or these proposed schedules, to take with you to some of those meetings?

A. I suppose so; I have not the least doubt of it.

Q. Did not others bring some too?

A. Yes, sir; but they took them back again.

Q. They brought them there to make a basis?

A. Yes, sir; most every one did bring them.

Q. What became of those papers?

A. Some of them we left there; the others,—a great many
8939 took them back again with them; changed them from one meeting to another.

(By the CHAIRMAN:)

Q. Did you submit a number of schedules of this sort and leave them with the secretary of the pooling committee?

A. As a general thing, we left them there; it was only a preliminary paper; I think they were all left with the secretary.

Q. Would you expect him to have them now?

A. Yes, sir; if they were in my hands I would have them?

Q. Who valued your real estate, finally?

A. Mr. Rowland.

Q. No, the real estate?

A. Mr. Lewis J. Phillips.

Q. Who valued the real estate of the Manhattan?

A. I couldn't tell exactly who did; informally we had it also done.

Q. Who valued the real estate of the New York and Harlem?

A. I really couldn't say; we had different estimates submitted, and finally they submitted one which was adopted; the value for the New York and Manhattan; ours was valued by Mr. Phillips.

Q. Harlem was valued by whom?

A. I don't know.

Q. During those talks in 1883 the total capital of the properties of the consolidated companies was a subject-matter of conference, was it not?

A. Yes, sir.

Q. And that was upon the basis of the Mutual being in the consolidation?

A. Yes, sir.

Q. In respect to the values—who selected these gentlemen to make the valuations?

A. I think each company had its own selection.

Q. When was it first proposed that they should be appraised?

A. The minutes must show that; the minutes of the pool-
8940 ing committee must be there.

Q. The minutes of the pooling committee don't show any agreement in respect to appraisements; they do show that in December, 1883, it was agreed that they should consolidate and "that the plan for consolidation accepted by the committee be referred as a basis to the committee of one from each company to report a plan in full detail for the consolidation of all the companies, with power to call in legal counsel;" that was at a meeting held in December, 1883; don't you remember some occurrences, during the year 1884, in respect to appraisements of the property?

A. I recollect that it was agreed that we should have one man to appraise one style of gas works and another one to appraise the other style of gas works—I mean coal gas works and water gas works.

Q. About when was that understanding arrived at?

A. I couldn't tell exactly when, but I suppose about March or April.

Q. Who were named as competent men for that purpose?

A. We named William Palmer—our company named him; and others proposed Mr. Rowland; I think it was left to each one of the companies; for instance, the Mutual did not employ either of these two.

Q. Whom did they employ?

A. I couldn't tell; they submitted that this is the statement, and that no other shall stand.

Q. Kennedy submitted such a statement?

A. Yes, sir; their own valuation.

Q. That valuation included all the real estate and plant?

A. Yes, sir; I think so; as much as I know.

Q. You remember about when that was?

A. That was either June or July probably.

8941 Q. How did it happen that Rowland finally appraised the Metropolitan property after you had proposed Palmer?

A. Palmer could not get through so quick as the other; it took a great deal more time, and the company wanted to finish the business quicker.

Q. What gentlemen wanted to finish the business quicker?

A. All of them, I think; most of them; I couldn't exactly recollect; Mr. Palmer appraised the Manhattan too.

Q. He appraised the gas plant of the Manhattan, did he not?

A. Yes, sir.

Q. What else did he do?

A. I don't know whether anybody else did it, but he did it just as I know.

Q. Did you see his appraisement?

A. I saw part of it; not the full; I never saw it completed.

Q. In whose hands did you see it?

A. At the time of the meeting it was submitted.

Q. What meeting?

A. The meeting of the pooling committee.

Q. Do you remember its date?

A. I couldn't tell by heart.

Q. Do you remember the basis by which the value of the rights and franchises, so-called, were arrived at?

A. I don't recollect exactly how; partly by value of stocks as they sold; but I don't know what else.

Q. Don't you think that the price of gas is capable of being cheapened, or likely to be cheapened to consumers of the city, by maintaining this consolidation?

A. I am not sufficiently a judge, but I think competition is always the best thing.

Q. Then this has a tendency to destroy competition?

A. To make it cheaper.

Q. It tends to destroy competition, does it not?

A. Yes, sir.

8942 Q. Do you remember the value of your Metropolitan stock —I mean its salable value in 1884—about what it was worth?

A. It sold at 245 and higher; I bought it myself at 245 100 shares —I paid that for 100 shares; it was before the consolidation; I could not give the date of it.

Q. What was the business advantage, in your opinion, for the Metropolitan to enter into this consolidation upon the basis it did enter it?

A. I may be prejudiced, but I say none whatever.

Q. If, independent of your interests as stockholder or as a director in the Metropolitan, you can express an opinion, what is the public benefit to the gas consumers in the city of New York in entering into this consolidation?

A. That it may prevent too often interrupting the streets by the laying of mains by small companies.

Q. That is all the substantial benefit?

A. That is the main benefit, I think.

Q. In your opinion, by that consolidation was the price of gas to consumers likely to be cheapened?

A. I could not possibly decide on that.

Q. If 100 shares of the Metropolitan stock at the time, or about the time of this consolidation, were worth 250, and 100 shares of the Consolidated stock were worth the price of eighty-four, and the Consolidated was given for the Metropolitan at the rate of 260, as it appears it was given according to the books, there would appear to have been a loss of over $3,000 on 100 shares of stock?

A. Yes, sir.

Q. At the price at that time?

A. Yes, sir, and that has actually been the fact.

Q. In that respect the Metropolitan stockholders at that time were the losers?

A. So far; yes, sir.

Q. Why under those circumstances, and under the circumstances you have already described, did you as an officer of the Metro-
8943 politan, execute this consolidation agreement?

A. Well, I thought that the majority of my directors—their judgment should be mine.

Q. Have you made any propositions or efforts toward inducing the Consolidated Company to lower the price of gas?

A. In a general way.

Q. Has that subject been under consideration by the Consolidated Company at any of the meetings of its directors or its committees?

A. You mean of the original committees, for instance, like myself, selected for the Metropolitan, or the conference pool.

Q. I am speaking since November, 1884; has that been a topic of consideration by any of the directors of the Consolidated or its committees, informally or formally?

A. Yes, sir.

Q. Have any papers been prepared or submitted to any of the directors or officers of the Consolidated Company on that subject?

A. It was moved in conference in the meeting to reduce the price to 175, and to 150 to large consumers, and was passed and adopted.

Q. That appears by the minutes of the Board?

A. Yes, sir.

Q. That does not change the price that previously prevailed, does it, 150 to large consumers?

A. That has been adopted since the consolidation.

Q. That was done in November, 1884, and immediately after the consolidation?

A. Yes, sir.

Q. What was the reason that the price should be lower to large consumers than it was to the general public?

A. It was more advantageous to furnish large consumers; it requires only one meter and one service to a large consumer and the same to small consumers.

Q. Does that make a difference of sixteen per cent. in the
8944 saving?

A. I don't know whether it is exactly sixteen per cent., but it is decidedly a saving; and it would be cheaper to the company to furnish the big ones at 150 than the small ones at 175.

Q. Immediately after the consolidation has there been up to the present time any consideration by the directors of the Consolidated Company, or by its committee, formally or informally, any proposition to reduce the price of gas still further?

A. It was mentioned but no action taken.

Q. When was it mentioned?

A. I couldn't give you any dates—perhaps two months ago.

Q. Who opposed it—anybody?

A. I couldn't tell you.

Q. Who favored it, if anybody?

A. I don't remember; it was not passed; that is the majority was not in favor of it.

(By the CHAIRMAN:)

Q. You don't remember who favored it or who opposed it?

A. I don't remember; no decided action was taken.

Q. The majority was against it?

A. No action was taken; it was left uncompleted.

Q. What was the reason that there is no note of that consideration found upon the minutes of the board?

A. It was only perhaps a motion made and considered and not in regular shape.

Q. At a meeting of the board of directors, held July 22, 1885, which is found on page 28 of the minutes of the board, I find a resolution:

"Mr. Zollikoffer offered the following:

"'*Resolved*, That that portion of the minutes that it is not expedient that the secretary should furnish copies of the minutes to any person or officers of this company, offered by Mr. Sloan and
8945 passed by the executive committee on the 7th of July, be stricken out; said resolution having been offered and adopted in violation of my rights as an officer and chairman of the executive committee and denying me such information as I think necessary for the discharge of my duties,' which on motion was laid upon the table."

Q. Do you remember an occurrence of that kind?

A. I should say so.

Q. What was the occasion of it?

A. I wanted to take copies of the minutes myself.

Q. Who didn't want you to take copies?
A. I think Mr. Sloan; I don't recollect who it was.
Q. Did you take copies finally?
A. I was forbidden; I did not take any since.
Q. Are you the chairman of the executive committee?
A. Yes, sir.
Q. Can't you take copies of the minutes of your own committee?
A. It appears not; I have not taken any legal steps to ascertain.
Q. Have you read the minutes of that committee?
A. I read them always.
Q. Do they tell of the proceedings of the committee?
A. I suppose so; I never saw any thing that was missing; they always submitted them to me.
Q. In the minutes of the executive committee concerning a meeting held July 7, 1885, at page 41, it is recorded, "moved and seconded that it is not expedient that the secretary should furnish copies of the minutes to any person or officer of this company," which was carried, Zollikoffer protesting and voting in the negative; do you remember that occurrence?
A. Yes, sir.
Q. Was there any debate on that subject?
A. Well, there was a short debate; I expressed my views.
Q. Who expressed any other views?
8946 A. I couldn't tell exactly who it was; several made remarks that it was not expedient; I didn't ask them to give me the minutes; I took them myself.
Q. Did they say why it was not expedient?
A. No, sir.
Q. Were Mr. Francklyn and Mr. Lees present?
A. I don't remember.
Q. It appears from the minutes that Messrs. Francklyn, Lees, Rutter, Sloan, Smith and Zollikoffer were present; do you remember of any papers whatever being submitted to the board of directors of the Consolidated Company touching the price of gas, or a proposition to lower it, or a proposition to cheapen the cost of its manufacture and supply—any papers whatever on those topics?
A. When?
Q. Since November, 1884?
A. It was discussed; I don't recollect any papers with it; there might be.
Q. Do you not remember some papers having been prepared and submitted specially on that subject?
A. I do not recollect it.
Q. Have you attended all the meetings of the board?
A. Except one.
Q. And of the executive committee?
A. Every one, I suppose; there might be one or so that I did not.
Q. In your opinion, are the gas consumers of the city in any way benefited by the increased capitalization which has attended this consolidation?
A. I can't say positively that they are; I am not positive about it.

Q. Assuming the necessity of paying dividends upon this enlarged capital, is there any probability, so long as it stands, in your opinion, of the price of gas to consumers becoming smaller?

A. Well, it depends on further competition.

8947 Q. If the consolidated companies met with further competition you mean to say it may be obliged to reduce the price of gas?

A. Yes, sir.

Q. The dividends then will disappear?

A. Well, in my view of it.

Q. So long as there is no competition and dividends are declared upon this enlarged capital there is no probability that the price of gas will be reduced, is there?

A. Well, the increase of gas consumers will be enormous, and therefore it would increase in proportion with the capital; it would not be too small in proportion.

Q. If the increase should be very great—I mean the increase of consumption, more works would be necessary, would they not?

A. Yes, sir.

Q. And it would require larger capital to build them?

A. The present capital would be large enough to build more works.

Q. You mean out of the working capital?

A. Yes, sir.

Q. You mean to say that sufficient stock has been reserved and issued to Mr. Smith, treasurer, for that purpose?

A. No, sir; I mean that the capital is large enough.

Q. You mean the nominal capital of the Consolidated Company is largely in excess of that which is required to meet the present demand of gas consumers in the city of New York—that is true?

A. I don't take it that way; I don't think I am a sufficient judge of that.

Q. You have said, however, you think that the capital is adequate—is not that on the presumption that some of it may be made available for increasing the works?

A. I think the capital is large enough to increase the works to a much larger production.

8948 Q. Are you aware that all of the capital has been issued except what has been reserved for working capital, and held by Treasurer Smith?

A. I suppose that is kept as a reserve for future increase.

Q. Is not that for future indebtedness of the company, $1,303,000?

A. Expressly reserved for future increase, I suppose.

Q. Don't you know that the only part of this entire capital that is reserved for the possible future wants over and above indebtedness is $1,303,000?

A. It was so at first.

Q. Has that been increased in any way since?

A. Not that I know of.

Q. No stockholders have contributed to that fund?

A. No, sir.

Q. So that any possible sum that may be utilized for the enlarge-

ment of the gas-producing works for the Consolidated Company without increased capital is in this sum of $1,303,000?

A. As much as I know that is so.

Q. Do you mean to say in your opinion that that sum is sufficient to enlarge the works, and for the probable expenditures necessary in this city for gas for many years to come, and to build additional works and gas plant?

A. In all those things it depends very much on what kind of a demand there will be; I think the whole property and everything is sufficient for a large increase.

Q. Do you remember any report of the committee on works and manufacture to the board of directors of the Consolidated on the subject of reducing the cost of gas?

A. No, I don't recollect any; it was mentioned repeatedly I guess, only on discussion.

8949 Q. Do you know of any curtailing of the expenses in conducting the business which has been conducted by the constituent companies that has been attained by reason of this consolidation?

A. Well, I think they have made reductions.

Q. Of what character?

A. At one branch—the Harlem gas works being abandoned in order to save some repairs and expenses and—we have had the intention to do some more.

Q. Of the same sort?

A. The same thing; to have some of the plant given up.

Q. Why should not such property as that then be sold?

A. There are two reasons; one is if there was hereafter an increase they would be very glad to have it again; then it is difficult for a gas company to buy land where it is known it is going to be used for a gas company; every owner asks enormous prices for it; they don't wish to have gas companies adjoining.

Q. Do you not think that if the Metropolitan Company were left alone in the conduct of their business as it was conducted before the consolidation that they could have paid a reasonable dividend to their stockholders and reduced the price of gas to consumers below what it can possibly be had of the Consolidated, with profit to that company?

A. Well, I could not exactly say anything positive about that; I might have that impression, and I have that impression; but there are a great many that always interfere in a business of that kind; I mean fresh competition in one locality where another one is already located brings down the price; therefore my opinion is always that competition is always the sole life of business, and that it is the only thing that brings it to a standard.

Q. Assuming that you had a fair production?

A. I don't know what is fair.

8950 Q. Assuming you had such a production as would enable you to supply the territory to be supplied, exclusive from interference by any other company?

A. We have had a great many ups and downs already in our company; that shows me that it is uncertain what you can do.

Q. In your opinion is the price of gas likely to be any cheaper by this consolidation than it would have been if continued in the Metropolitan?

A. I suppose not.

Q. Have you no memorandum whatever, or has any officer of the Metropolitan any memorandum relating to the basis of consolidation?

A. We must have, because we submitted it to our board.

Q. Will you bring such a memorandum before the committee?

A. Yes, sir; we have the same in the general office.

Q. Any memorandum relating to the consolidation which was submitted to the board. Will the books of the Metropolitan Company show the cost of its plant and real estate?

A. The cost and expense from time to time was added to it; yes, sir.

Q. Your company bought some of the property of the Manhattan, did it not?

A. Yes, sir.

Q. What year was that?

A. Eighteen hundred and fifty-nine, I think, or 1860.

Q. Eighteen hundred and sixty-three?

A. Yes, sir; perhaps so.

Q. It was paid for in stock?

A. Yes, sir.

Q. Of the Metropolitan?

A. Yes, sir.

Q. Issued at par?

A. Yes, sir; it was then at fifty cents.

Q. They took it at fifty cents on the dollar?

A. Something like that.

Q. The price of the property was fixed on that basis?

A. I think so.

Q. Also the bonds?

A. Par, cash.

Q. Was not that cash raised by the bonds?

A. No, sir; we had no bonds at that time.

8951 Q. Was not there a bond and mortgage of $165,000?

A. There was a mortgage.

Q. That was turned into cash?

A. Yes, sir.

Q. They were all paid finally?

A. Yes, sir.

Q. That stock became par and over?

A. Yes, sir.

Q. And it was held by the Manhattan Company?

A. It was divided between the stockholders of the Manhattan Company.

Q. Do you know how it was divided?

A. We bought from them all their services and meters in our district, and that was a consideration, and paid in a mortgage bond.

Q. Do you know the total?

A. I couldn't say.

Q. One million one hundred and seventy-eight thousand dollars for stock?

A. Yes, sir.

Q. Was not that stock sold and divided among the stockholders of the Manhattan?

A. It was delivered to them; what was done after that I don't know.

Q. What was the cost of the property thus sold to the Manhattan?

A. I think the amount of what you mean was $1,178,000.

Q. That property did not cost $1,178,000?

A. Yes, sir.

Q. Is not it a matter of fact it did not cost the company but $600,000?

A. Our company?

Q. Yes.

A. I don't think so.

Q. Please look at your books and see if that is not so. The expert thinks that that is the substance of that transaction.

A. All the meters and the services and pipes that we bought from the Manhattan Company were valued at so much, and then the real estate was valued at a certain amount, and then we had to sell the stock at the then market value.

Q. The cost of that property, on the books of the Metropol-
8952 itan which was thus transferred, being part of the gas producing plant and real estate of the Manhattan, was $685,301.02; that is made up of real estate, $105,000; Sixty-fifth street station, $213,000; mains, services and pipes, $327,500; also meters, etc., $34,801, making in all $685,301.02—that is what the Manhattan charged the Metropolitan for that property; $1,178,000 was paid for it by a bond and mortgage. What do you know about the $500,000?

A. The stock sold at fifty cents in the market, and by and by it increased its value.

Q. Where is the difference charged to?

A. We had no authority then to issue so much stock; it was in order to have peace with the company.

Q. Was not the difference charged to construction account?

A. I couldn't tell you; most likely it was charged to somewhere.

Q. That increased the cost of the works just to that extent?

A. Yes, sir; but we afterward reduced the cost of carrying on the works, and kept them in repair, and we made the full value up; the business of the company was carefully managed, and had increased in value.

Q. Who got the benefit of this $500,000 of stock—the Manhattan stockholders?

A. Yes, sir; at first.

Q. Did your company get it in any way?

A. It remained in our company.

Q. That $500,000 was added to the value of their plant and real estate when it went into this Consolidated Company?

A. Long before; it made their capital so much more.

Q. When you added betterments to that plant you charged those as they were made from time to time also against cost of construction?

A. Whatever was entirely new we charged to construction account, and we put some to repair account.

8953 Mr. TREMAIN: I think it would save a little time if Mr. Zollikoffer will get those memorandums he has been asked about now.

Q. Have you a sufficient memory of all the things we have asked you for?

A. I wish you would write down what you want.

The witness' examination was here suspended.

Recess to 2:30 o'clock.

Hearing Resumed.

NEW YORK, *Nov.* 25, 1885, 2 p. m.

PERCY R. PYNE, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are a director of the Consolidated Company?

A. Yes, sir.

Q. What of its constituent companies were you interested in?

A. In the Manhattan and the New York.

Q. You were one of the directors of the Manhattan?

A. Yes, sir.

Q. And of the New York also?

A. Yes, sir.

Q. You are a member of the finance committee of the Consolidated Company?

A. Yes, sir.

Q. And of the executive committee?

A. No, sir.

Q. You were also represented in the Metropolitan?

A. As a shareholder I had an interest.

Q. You were one of its directors?

A. For many years prior to its consolidation.

Q. You were in the board of direction of the Manhattan?

A. Yes, sir.

Q. And of the New York?

A. Yes, sir.

Q. You are familiar with the details of the consolidation from 1880 to 1884?

A. Yes, sir.

8954 Q. You know about the discussions preceding the consolidation?

A. Yes, sir.

Q. Have you any memorandums relating to those discussions or to the basis of them?

A. No, sir.

Q. Did you ever have any?

A. No.

Q. Have you any reports of committees upon that subject of consolidation?

A. No, sir.

Q. Never had any?

A. No, sir; I understand you as to the formation of the company?

Q. Have you any papers at all relating to the subject-matter of consolidation?

A. No, sir, I have papers relating to the carrying out the work of the present organization of the company and its working details since last November.

Q. Have you any memoranda whatever on the subject of consolidation?

A. None whatever.

Q. Made prior to November last?

A. No, sir.

Q. Did you ever have any?

A. No, sir.

Q. Did you ever see any such papers?

A. No, sir.

Q. Were none ever submitted to the board of directors of the Manhattan Company?

A. I have no recollection personally; the terms of the consolidation were submitted to the board, and they were then submitted to the stockholders; the articles of agreement of consolidation were acted upon by the respective boards—acted upon by the committee on consolidation; they came to the respective boards and then they were submitted to the stockholders.

Q. Was there not a committee on consolidation appointed by the Manhattan board?

A. Yes, sir.

Q. When was that appointed?

A. This was long ago; I could not give the date.

Q. About 1880 or 1881?

A. I would not give the exact year; I don't remember.

8955 Q. Your best recollection?

A. I have not any.

Q. Is it not true that that subject-matter was before the board, particularly after the pooling agreement was formed, and frequently thereafter—the subject of consolidation?

A. The committee reported substantial progress but reported verbally.

Q. Didn't that committee report as early as during the year 1883?

A. Not as a finality; the reports were continuous; they reported progress over and over again.

Q. In 1883?

A. I could not tell you.

Q. It was a year or two prior to the consolidation?

A. Some time.

Q. Were any of those reports in writing?

A. All the reports which I have recollection of were verbal.

Q. Have you any recollection whatever of any report in writing?

A. The first report I recollect any thing about was the report of the committee on consolidation, which came to us in a shape for us to act upon and vote.

Q. I find in the records of the meeting of December, 1883, a note of a plan of consolidation which had been accepted by the committee, and which was referred to another sub-committee, as a basis for a consolidation. Does that refresh your memory?

A. No, I can't say that it does.

Q. Are you perfectly sure that no paper was ever presented to the board of directors on that subject prior to the fall of 1884?

A. I have no recollection of it.

Q. Have you any recollection substantially of any of those verbal reports that were made by the committee on consolidation to the board of directors of the Manhattan Company at any time prior to the year 1884?

A. I recollect that reports were made verbally.

8956 (By the CHAIRMAN:)

Q. Have you any recollection?

A. I have none; I have no special recollection with reference to it.

Q. Who is the individual that ever made such a report at any time to your recollection?

A. It was made by the members of the committee, I think Mr. Smith and Gen. Roome.

Q. To the best of your recollection, then, no report was made to the board of directors of the Manhattan Company prior to the fall of 1884 upon the subject of consolidation except a verbal report, and such reports were made by Mr. Smith or Gen. Roome?

A. Yes, sir.

Q. Is there any member of the board of directors who would be specially familiar with the substance of such reports, other than Mr. Smith or Gen. Roome, to whom you would refer the committee for that?

A. The report at large? I can't particularize any one; the board had appointed their committee to refer—the reports being made at the general meeting of the board; I can't remember.

Q. Have you any information yourself as to the basis on which the agreement of consolidation was arrived at prior to the summer of 1884?

A. No information except what is set forth in the articles of agreement.

Q. You did not have any thing else except that relating to the basis—I mean the formal articles of agreement?

A. Those are the only ones we ever assented to.

Q. Was any thing ever said upon the subject of the total capital for a consolidation prior to November, 1884?

A. Yes, sir.

Q. As a matter of time when did you first hear that broached?
A. I should think about a month before that.
8957 Q. Don't you know the papers were dated September 29?
A. No, sir.
Q. Don't you know, as a matter of fact, that the subject-matter of capital was discussed early in that year?
A. I was not on the adjusting committee; I could not tell; all my relation to it was in the board.
Q. Was it ever discussed with you except in the board?
A. No, sir.
Q. Did you ever hear that subject-matter discussed except in the board?
A. Yes, sir; certainly.
Q. You had heard the subject-matter of consolidation mentioned, and you had urged it for years?
A. Yes, sir.
Q. During all that period was the subject-matter of capitalization ever alluded to?
A. I could not tell you.
Q. During the period that you had heard this subject discussed touching consolidation you had heard the subject of capitalization alluded to?
A. Yes, sir.
Q. By whom?
A. The members of the board; I said as near as it could be done I was in favor of it on equitable grounds.
Q. Do you remember a plan of capitalization alluded to?
A. In detail?
Q. You know what a plan means?
A. Yes, sir.
Q. Did you hear a plan of capitalization alluded to?
A. Yes, sir.
Q. What plan did you hear first?
A. The only plan I heard was the capitalization of the company upon an equitable basis in regard to the value of its properties.

(By the CHAIRMAN:)

Q. Did you hear any thing said during the period referred to by Mr. Tremain, as to what would be an equitable plan or basis of valuation?
A. No, sir.
8958 Q. When did you first hear any thing respecting a plan of valuation?
A. On the report of the committee it came to me.
Q. Was that report in writing?
A. I mean the articles—the terms which the committee agreed upon and brought to the board for action.
Q. Was there ever any report in writing signed by any of the board of directors?
A. As an agreement of consolidation?
Q. Was there ever any report in writing signed by any of the board of directors?

A. I have no knowledge of any.

Q. So far as you know this last scheme, resulting in the agreement of consolidation, arrived at its perfection in the articles of agreement with out any preliminary papers whatever that ever came before the Manhattan or to your information?

A. Yes, sir.

(By the CHAIRMAN:)

Q. Relating either to the valuation or the method of making it; is that true?

A. I heard general desultory remarks or conversation, and nothing else.

(By the CHAIRMAN:)

Q. You say you never saw any preliminary plan of consolidation or valuation in respect to either its amount or the method by which it should be reached?

A. I heard from the committees from time to time their report of progress; that's all I heard on the subject.

Q. When is the first time you heard any figures named in that connection?

A. On the report of the committee to the board.

Q. Did you ever consider whether $3,000,000 was a proper and fair valuation for the property, rights and franchises of the Harlem Company?

A. That was considered by the committee and not by me.

Q. Did you ever consider whether $3,000,000 was a proper
8959 and fair valuation for the property, rights and franchises of the Harlem Company?

A. I considered it so; the committee reported that they had investigated and I believed it to be correct.

Q. You considered it to be so at that time?

A. Yes, sir.

Q. And not before that?

A. I had no knowledge of that company except through the committee.

Q. You mean to say that prior to the time in November?

A. Or when the committee reported.

Q. You had no knowledge of the values upon which the consolidation was proposed to be based?

A. No knowledge.

Q. No knowledge or information?

A. No.

Q. Did you ever see such papers for instance as Exhibit C. "I." (paper presented to witness)?

A. I believe I never saw that paper.

Q. Did you ever see a paper similar to this, representing the properties of the companies?

A. I have no recollection; I was not on that committee.

Q. You voted to consolidate with a capital of the amount of the fair aggregate value of the property, rights and franchises of the constituent companies?

A. I did most emphatically.

Q. As an item of that capitalization it appears that for the property, rights and franchises $7,781,000 of the capital has been awarded out of a total of $39,078,000. Will you please state to the committee what in your opinion, as a director of the Manhattan and as a director of the Consolidated, that part of the capitalization is based upon?

A. I think the valuation of the franchises made by the committee and by comparison with what I got for my own stock, which
8960 I certainly would not have sold for less than I got stock for—I mean my old stock in the old company—I would not have sold my stock that day for what I got out of the Consolidated Company.

The CHAIRMAN: That is not responsive.

Mr. TREMAIN: I think the answer better stand and let the question be repeated to him; he was asked for his opinion; have you any other answer to give, asking for your own opinion?

A. When I saw the adjustment which was made upon those different companies coming in, those which I had personal knowledge of, I considered they put in but fair valuations, including their property, rights and franchises; I could have sold my old stock for more than I got in the Consolidated when I got it.

Q. You think the valuation was brought up to the market value of the Manhattan stock?

A. It represented it but I didn't think it was brought up in the sense in which you mean it; it represented it.

Q. You think the valuation was brought up to the market value of the Manhattan stock?

A. No, sir; it corresponded nearly with the value, the market value of the stock at the time of consolidation.

Q. Do you mean to say inasmuch as the stock of the Manhattan was at that time worth about 320 in the market, that for that reason the capital was so adjusted that you should receive for the new stock at the rate of 298 and ½ for one share of Manhattan?

A. I did not get that; it was worth 320.

The CHAIRMAN: That is not an answer; repeat the question.

Q. Do you mean to say inasmuch as the stock of the Man-
8961 hattan was at that time worth about 320 in the market, that for that reason the capital was so adjusted that you should receive for the new stock at the rate of 298 and ½ for one share of the Manhattan?

A. I did not receive it so.

Q. That is not what you mean to say?

A. The valuation appeared to me to be fair.

The CHAIRMAN: Repeat the question.

Q. Do you mean to say inasmuch as the stock of the Manhattan was at that time worth about 320 in the market, that for that reason the capital was so adjusted that you should receive for the new stock at the rate of 298 and 1-2 for one share of the Manhattan?

A. I don't mean that it was or *ought* up to that; it was not brought

up to meet a market value, but a valuation of course; it did correspond to the market value.

The CHAIRMAN: Then you do not mean to be understood just that way; repeat the question.

Q. Do you mean to say inasmuch as the stock of the Manhattan was at that time worth about 320 in the market, that for that reason the capital was so adjusted that you should receive for the new stock at the rate of 298 and 1-2 for one share of the Manhattan?

A. No, sir; I don't say so.

Q. Was the stock, at that time, worth 320 in the market?

A. I don't know; it may have been so; I think the value of the stock was in the neighborhood of 300.

Q. When?

A. Long in the early part of 1884.

Q. When was it 320?

A. I don't know: I have got my stock and that is all I know about it; I couldn't tell whether it was up or down.

Q. Assuming the value of the Manhattan stock at that time to have been 300, and that you received, as appears by the books, 298 and 1-2 in shares of the new stock for the old, and that the new stock at that time was worth as it appears to have been
8962 quoted at eighty-four; it appears, therefore, by such a transaction to be a loss on one share by the transfer, or about $50; will you please tell the committee where there was any profit to yourself as a stockholder of the Manhattan?

A. There was none.

Q. Was there ever any consideration, as a stockholder, to do it?

A. No, sir.

Q. Were there any public reasons that influenced your action as a member of the board of directors of the Manhattan Company in accomplishing this consolidation?

A. As a member of the board of directors there was unquestionably.

Q. What public advantage then appeared likely from this recapitulation of $17,000,000 to about $39,000,000?

A. To reduce the price of gas.

Q. Now, will you please state to the committee how, in your opinion, the price of gas to consumers was to be reduced by this enlargement of capital from the capital stock of the constituent companies, which was then $17,000,000, to a capital represented by $39,000,000 in the consolidation?

A. The original capital being simply nominal the values were transferred at a fair price to the Consolidated Company; I mean to say this, that unless we could take some measures to check the constant tendency for new additional gas companies, with new capital, that we never would get the price of gas down.

Q. If you didn't prevent competition it would be impossible to reduce the price of gas?

A. Yes, sir.

Q. You thought that by creating a monopoly for furnishing it that, therefore, the price would be low?

A. We could not create a monopoly; it is the constant addition of capital to keep the price up.

8963 Q. In your opinion is not a reasonable dividend a fair element in the cost of gas?

A. Certainly.

Q. Do you think that the companies forming the constituent companies, at the time of this consolidation, and which appeared to be capitalized at a nominal capital of $17,000,000, were paying enough to make it a reasonable dividend?

A. Yes, on the value of the property; not on the nominal capital.

Q. Do you think there was being paid in 1884 a fair dividend on the $17,000,000 of gas capital represented by the share capital of these constituent companies?

A. Taking that capital at the market price I do.

Q. Do you think that there was being paid in 1884 a fair dividend on the $17,000,000 of gas capital represented by the share capital of the constituent companies?

A. Certainly.

Q. Will you say it tended to lower the price of gas by necessitating as an element of its cost a dividend on a nominal share capital of $39,000,000 instead of $17,000,000?

A. That capital representing the value, and with an element of competition from time to time, I do.

Q. Do I understand you to say that you think it is a fair element in the cost of gas to include a dividend upon the difference between the share capital of $17,000,000 of the constituent companies then represented and the share capital of $30,078,000?

A. If the share capital represents the actual capital I do.

Q. Do you think it is a fair element in the cost of gas to charge the public with a dividend upon the accretions of value which you say existed between $17,000,000 and $39,000,000 because of the absence of competition?

A. The reduction of the dividend being made equal to it I do.

8964 Q. What in your opinion would be a fair and reasonable dividend upon the actual capital invested in a gas plant?

A. In the gas plant, the gas process being constantly liable to change, I should think ten per cent. would be considered a reasonable dividend.

(By the CHAIRMAN:)

Q. Does the money and the market value at the time of other property, if there be any put into a concern, represent the actual stock of that concern? Would it, or would it not, represent it?

A. I want to answer the question properly; if you say the present market value——

(By the CHAIRMAN:)

Q. I mean the question as it is put?

A. It does so in the Consolidated Company.

Q. Does it make any difference whether it was consolidated or not?

A. I mean to say this, if we bought lots forty years ago and paid

$200 a piece for them and could to-day sell them for several thousand dollars $7,000 a piece, that is the value of what they are worth; if you will put it at the present time; I could not answer it; will you say the existing market value instead of at the time? I don't know how to answer it.

(By the CHAIRMAN:)

Q. Would this be your answer: "Yes, it would, plus the increase, if any, of the value of the real estate, if any was put into the concern?"

A. That increase in value and other properties acquired by the company?

Q. What other properties?

A. Mains and meters, and we are putting in new additional mains.

Q. Do you put in better mains than you had before?

A. New; they are calling upon us all the time for new.

8965 Q. My question covers that; does the money and the market value at the time of other property (if there be any put into a concern, represent the actual stock of that concern? Would it or would it not represent it?

A. It would in valuation of real estate and assets.

Q. What do you mean by assets?

A. All the properties of the companies; if the property was bought a great while ago at a low price the present value should be represented.

(By the CHAIRMAN:)

Q. Is the property put into a gas concern the capital of that concern, in your opinion?

A. Yes, sir, provided the valuation is correct.

(By the CHAIRMAN:)

Q. Is the property put into a gas concern the capital of that concern, in your opinion?

A. Of course it is.

Q. Do we understand that in your opinion the capital of a gas company consists of money that was put into that company and the accretions of value of it ensuing therefrom?

A. And the value of its business.

Q. It constitutes a part of its value. Does it constitute a part of its capital—does it constitute the capital?

A. Yes, in connection with its good-will and franchise.

Q. Would not the good-will and franchise be valued separately from the property in ascertaining such capital in that way?

A. I should think so.

Q. How would you value the property if you were going to value it separately from the good-will?

A. At its actual value; I should get appraisers, disinterested men, to look into and report upon it.

8966 Q. And if their appraisement appraised the property upon the condition that it should be used as a going concern at the place of appraisal would you still add the good-will to the value?

A. I would separate it from the business.

Q. And if their appraisement appraised the property upon the condition that it should be used as a going concern at the place of appraisal would you still add the good-will to the value?

A. I would add the franchise.

Q. How would you arrive at the value of the franchise?

A. By examination and appraisal of competent parties.

Q. You held stock in both of these companies for a great many years?

A. Yes, sir.

Q. You are presumed to have some knowledge of the value of the franchises. You assented to this agreement of consolidation for these reasons, as you have explained. What in your opinion is a fair method of ascertaining the value of the franchises of the Manhattan and New York Companies at the time of this consolidation, if they had any so-called franchises?.

A. The report of experts.

Q. Who would be an expert?

A. The officers familiar with the gas business.

Q. And you would not be an expert?

A. No, sir.

Q. Have you any opinion as to the value of the franchise?

A. I think the franchises was valued very low.

Q. Have you any opinion of your own?

A. I have no separate opinion from the valuation arrived at.

Q. You have no opinion of the value of the franchises separate from the business?

A. Separate from the transaction itself; I mean the terms of consolidation.

8967 Q. Have you any independent judgment as to the value of the franchise of the Manhattan on the 10th of February, 1884, apart from whatever other people may have put it—acting upon your own judgment?

A. No; no separate opinion.

Q. Would it be a fair, reasonable method of arriving, in your opinion, at the fair aggregate value of the property, rights and franchises for the purpose of consolidation, and of the Manhattan and New York Companies to value the street mains, valves, etc., at what it would cost to replace them, to value the meters and services according to their size and by well-established rules and prices, and the value of real estate according to what the lots would bring in open market, and the value of the plant according to what it would cost to duplicate it, to be used as a going concern at the place where it is found and appraised; is that way fair in your opinion in arriving at the fair aggregate value of the property, rights and franchises?

A. That is a very difficult question to answer; I am really not competent to judge; incompetent to answer the question.

Q. Have you held that stock in the Manhattan since 1837?

A. No.

Q. You have not held it any year it didn't pay a dividend except one?

A. We have been without dividends *a* considerable of the time;

I was not a stockholder then when it didn't pay a dividend; I am speaking from information.

Q. There is not any year except one that it didn't pay a dividend, which was about forty years ago?

A. I could not say.

Q. What year were you without a dividend?

A. I could not tell.

Q. Whether there was such a time when it didn't pay a dividend?

A. Yes, sir.

8968 Q. When?

A. The beginning of the company, years ago.

Q. For how long a time?

A. I could not tell.

Q. They were organized in 1831 and they have paid a dividend every year except one to the present time; have you thrown all the light that your experience enables you to give upon this subject of capitalization?

A. I would like to give my reasons why I believe it is for the interest of the public to consolidate.

Q. Would it be a fair, reasonable method of arriving, in your opinion, at the fair aggregate value of the property, rights and franchises for the purpose of consolidation and of the Manhattan and New York Companies, to value the street mains, valves, etc., at what it would cost to replace them; to value the meters and services according to their size and by well-established rules and prices; and the value of the real estate according to what the lots would bring in open market, and the value of the plant according to what it would cost to duplicate it, to be used as a going concern at the place where it is found and appraised; is that way fair in your opinion, in arriving at the fair aggregate value of the property, rights and franchises?

A. I wish I were a lawyer so I could tell how to answer the question I am asked.

Q. Is the question obscure?

A. It is on the subject of capitalization.

Q. Would it be a fair, reasonable method of arriving, in your opinion, at the fair aggregate value of the property, rights and franchises for the purpose of consolidation, and of the Manhattan and New York Companies, to value the street mains, valves, etc., at what it would cost to replace them; to value the meters and serv-

8969 ices according to their size and by well-established rules and prices, and the value of the real estate according to what the lots would bring in open market; and the value of the plant according to what it would cost to duplicate it, to be used as a going concern at the place where it is found and appraised; is that way, in your opinion, fair in arriving at the fair aggregate value of the property, rights and franchises?

A. Those are not my reasons for capitalization; I have not given my reasons for capitalization.

Q. Is there any thing else you have to say to this committee on the subject of capitalization?

A. Yes, sir.

Q. You cannot separate the price of gas from the subject of capitalization?

A. You cannot reduce the price of gas——

The CHAIRMAN: He is asking if there is any thing further you wish to say on the subject of capitalization.

Q. By that I mean the capital which is represented by the share capital of $17,000,000 and the share capital of the Consolidated Company; is there any thing else you desire to say respecting that capitalization?

A. The capitalization of the companies with which I was originally connected, being nominal, is only fairly represented in the capital of the Consolidated Company.

Q. Is it a fact that the share capital of the Manhattan at the time of consolidation which was represented at $4,000,000, was merely nominal?

A. The nominal value of the property it held.

Q. Is not that all the money that was paid in?

A. The value of the property forty years ago and the property as worth to-day is a different thing.

8970 Q. I understand you to say that the capital of the Manhattan as represented by the share capital was merely nominal and to refer to value in 1884?

A. Only nominally represented its value; the share capital of the Manhattan did not represent its true value, which was much greater.

Q. How did it become so much greater than $4,000,000?

A. It became greater by the increased valuation of property from what it was forty years ago.

Q. What increased in value except the real estate?

A. The increase of value in real estate.

Q. What else, if any other?

A. I think you have the books before you and you can tell pretty well.

Q. Is not that the only element of its property that did in fact increase in value during this long period?

A. I think a very large amount that was in construction.

Q. Do you not know that the construction was paid for by the consumers in the price of gas?

A. No, sir. The original construction, do you mean?

Q. I mean all the construction?

A. There was a capital that was not paid by the consumers.

Q. Don't you know it was kept up, and all the repairs and betterments were paid for out of the price of gas; don't you know that fact?

A. Yes, sir; I suppose so.

Q. What other element of the property of the Manhattan Company, except the real estate, became enhanced in value?

A. Its business became greatly of more value.

Q. I speak of property, sir?

A. You cannot separate the company from its franchises and tools any more than you can the carpenter from his hammer. What would the carpenter do without a hammer?

8971 Q. What other element of property of the Manhattan Company, except the real estate, increased in value?

A. That forms the largest portion of the increase.

Q. Do you not know that the taxes and assessments on the real estate were paid for out of the price of gas?

A. Out of the proceeds of the business of the company.

Q. Do you know what the original cost of the real estate was.

A. No, sir.

Q. The original cost of the real estate appears from the books to have been $865,668.51. The real estate appears to have been valued for the purpose of consolidation at $4,000,163. That represents to that extent an increase of the value of the property that you allude to in this so-called nominal capital?

A. That represents the value of the real estate, I suppose, at the time it was made.

Q. Is not that what you mean by nominal capital?

A. Nominal is in the sense of what it stands for; for instance a silver dollar.

Q. It stands for what it cost on the books, does it not?

A. The cost of the real estate of course.

Q. Having shown you one element, as it appears from the papers already in evidence, where the value of property is estimated, as it is claimed to have been seriously enhanced as the basis of this capitalization, is there any other property of the Manhattan that was enhanced above its cost?

A. Yes, sir, I think the cost of construction and the plant very greatly in excess of what it stands there.

Q. Do you think the plant was worth, at the time of the consolidation, more than what it cost?

A. Why, yes.

(By the CHAIRMAN:)

8972 Q. The mains and retorts were worth more?

A. Yes, sir, the whole property.

Q. Worth more than when built, the mains and retorts, is that what you mean?

A Yes, sir.

(By the CHAIRMAN:)

Q. Is the capital of a business concern what is put into it; for instance, a mercantile establishment; is that what it means?

A. I should say yes.

Q. What had been put into the Manhattan Company prior to this consolidation; how much, if any?

A. I have not got the books here for forty years.

Q. You don't know how much?

A. The books will show.

Q. About how much?

A. I can't tell you.

Q. Do you know whether any was put in?

A. The books will show.

Q. Do you know whether any thing had been put into the Manhattan Company prior to this consolidation?

A. I am unable to answer your question.

Q. Now, when you speak of the nominal capital of the Manhattan you don't know then whether that was more or less than its actual capital, do you?

A. That was the amount of its actual stock.

Q. Do you know whether the $4,000,000 was more or less than the actual stock at the time of consolidation?

A. That represented the capital stock.

Q. That is not my question; was $4,000,000 more or less than the actual capital of the Manhattan at the time of this consolidation?

A. That was the actual existing capital stock of the company.

Q. Do you not know as a fact that while $4,000,000 was
8973 the nominal capital stock that of that a considerable portion—about $720,000—was not paid in?

A. I don't know; the books will show.

(By the CHAIRMAN:)

Q. Do you know whether or not any part of this $4,000,000 of capital stock was derived from the earnings of the company and received therefore from the gas consumers of the city?

A. I have no knowledge of any thing of the kind.

Q. Do you know?

A. I don't and I don't believe so.

Q. Were you a shareholder in 1855?

A. I think so, yes, sir.

Q. Did you receive a script dividend about that time?

A. If you will give me the book I will tell you; the book will show whether I did or not.

(By the CHAIRMAN:)

Q. Have you been a shareholder thirty years?

A. About.

Q. Do you remember that there was an act passed by the Legislature authorizing the Manhattan to increase the capital stock from $2,000,000 to -4,000,000?

A. I don't know.

Q. Do you know whether or not you were a member of the company at the time when this capital was $2,000,000 or less?

A. I could tell you by referring to my book but I could not tell you without.

Q. Do you think it would be right for the gas consumers to contribute to the capital stock of the company and then pay enough so that the stockholders should realize say ten per cent. dividend on the capital stock so increased?

A. I don't know of any consumers who have contributed to the capital stock in that way; I think all business is entitled to a fair, reasonable profit.

Q. Do you think it would be right to charge a consuming public

such a price that from the proceeds additions may be made
8974 from time to time to the capital stock and then enough to realize what you call a reasonable per cent., say ten per cent. on the capital stock so increased?

A. I don't know of any such contributions being made.

Q. Suppose there were any?

A. It is not a supposable case.

Q. You can't suppose that anybody would be willing to charge in that way; is that what you mean?

A. I don't know that anybody has contributed to the capital stock.

Q. Supposing they had, would it be right?

A. I could not say.

Q. At the time of the consolidation you held 980 shares of the New York, or thereabouts?

A. No, I did not.

Q. You took 980 shares of the new Consolidated Company for your New York holdings?

A. Yes, sir.

Q. You took 975 shares for your holdings in the Manhattan?

A. I can't recollect what I took.

Q. And 80.60-100 for your holdings in the Metropolitan?

A. Yes, sir, I think so.

(By the CHAIRMAN:)

Q. Whether the reduction in the price of gas has been co-existent with the increase of competition?

A. No, sir.

(By Senator MURPHY:)

Q. Do you think from your thirty years' experience as a stockholder and owner of gas stock that the companies can, if they should be put under State authority or municipal authority, reduce the price of gas and at the same time make it profitable?

A. I have not given that attention so as to say; I mean to say this, if one company supplied the city of New York that gas could be supplied cheaper; in London they have two companies, one on each side of the river, with a population of five and a half
8975 millions; what they regulate there is dividends; you cannot increase on the price.

Q. What was the objection of the gas companies to the legislation of last spring, recommended by the last Senate committee, if you think that a proper method of regulating was to regulate the dividends; what was the objection?

A. I don't know; I did not make any objection; I did not see any objection.

(By the CHAIRMAN:)

Q. You would limit the dividend upon the capital, of course?

A. The dividends to-day ought to be regulated with regard to the valuation of the property, and not the costs forty years ago.

(By Senator MURPHY:)

Q. You have not seen the gas accounts of London. There a dividend has been declared of ten and fifty-seven hundredths per cent.?

Mr. TREMAIN: On a certified capital.

The WITNESS: On the consolidated stock I would be perfectly willing to receive ten per cent. dividend.

Q. It seems by the accounts that the Manhattan Company has been paying for upwards of twenty years an average dividend of eighteen or nineteen per cent. during that period. Why could not the Manhattan have reduced the price of gas?

A. Because the price of gas did not represent the property.

FIFTH AVENUE HOTEL, NEW YORK,
FRIDAY, *November* 27, 1885—3:30 p. m.

Hearing resumed.

Mr. TREMAIN: The stenographer will note that Mr. James W. Smith appears and produces and leaves with the committee
8976 some papers called for during his examination.

I would suggest to the Chairman that Mr. Francklyn's examination be suspended for the present to allow Mr. Day to be examined.

HENRY DAY, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are one of the directors of the Consolidated Gas Company?

A. Yes, sir.

Q. And prior to that you were interested in the Municipal and Knickerbocker Companies?

A. Yes, sir; both of them.

Q. In any other of the constituent companies are you interested?

A. Not in this city.

Q. When did you first become associated with the Knickerbocker, in what year?

A. I would not be able to give that; I should think about five years ago.

Q. Some time prior to 1880, was it not?

A. I could not remember the date; I can remember the circumstances; it was at the time the Knickerbocker was sold out by the parties then controlling it.

Q. At the time the Knickerbocker was allied with the Municipal you first became connected with the Knickerbocker?

A. Yes, sir.

Q. How long before that had you become connected with the Municipal?

A. Sir, I should think two years.

Q. Did you conduct the transaction between the Knickerbocker and the Municipal Companies in any respect?

A. As counsel I gave my advice in regard to it.

8977 Q. Were you a director in the Municipal at that time?

A. Yes, sir.

Q. And did you not act as a director in the conduct of those negotiations and transactions?

A. I did to a certain extent whenever there was a meeting of the board and a vote passed; I acted as director then.

Q. What papers in March, 1885, did you have in your custody respecting the Knickerbocker or Municipal Companies?

A. Well, sir, I am not able to state in detail and confining it exactly to a date.

Q. March, 1885?

A. Do you mean papers that belonged to the two companies—title papers?

Q. Any papers?

A. I think there was a large number of title papers of the Knickerbocker Company, a large box full of them; and I think there were in my office a good many papers or leases which concerned the Municipal Company, but what they are in detail I am not able to state now.

Q. Were all the papers relating to the transactions between the Knickerbocker and Municipal Companies between 1879 and 1884 at your office?

A. I think not any of the original papers.

Q. Or copies of them?

A. If you will give me a chance to look and see I will tell you every thing I have got; I can't remember; I have a large package of papers but precisely what they are I could not say; my rule was to send the originals to the companies for them to have the custody of.

Q. How did it happen that you had the original lease in March between the Knickerbocker and Municipal, and also other original papers?

A. It happened in this way: Frequently I would send for those papers for some purpose for an examination, and they may not have been sent there; I don't remember; they were often kept some time before they were returned to the companies.

8978 Q. Have you any originals in your office now?

A. I have not looked at it for a year; I have a younger man a partner; he takes the charge of those.

Q. Your subpœna, I think, calls for some such papers?

A. I think not, sir; I have not read it through; I went to the wrong place instead of coming here at first; on examination I see it refers to papers, sir; I have no objection to produce any thing I have got, and if you will allow me to produce them Monday morning, any thing I have the custody of, I will be happy to do it.

Q. On the understanding then that you will send them to the Chairman?

A. I would like to know what papers; I have got a box of title papers; if you gentlemen care to see those, referring to real estate transactions, I will produce the papers.

Q. You prepared or caused to be prepared under your direction the agreement between the Knickerbocker and Municipal Companies?

A. Yes, sir, I did.

Q. And also the agreement between R. F. Cutting and the Municipal?

A. I don't think there was any between the Knickerbocker proper; I think it was a transaction between the holders of the stock of the Knickerbocker Company; I would not be positive about that; most of the papers were papers between the holders of stock and bonds of the Knickerbocker Company and other parties to the transaction.

Q. Now, when was the first transaction relating to bonds of the Knickerbocker of which you have any knowledge?

A. The first knowledge and first transaction was at the time the two companies were united in their interests, whatever that was.

Q. In 1880?

A. Yes, sir, the first time I heard of bonds, I examined the
8979 titles and found a quantity of bonds outstanding of the Knickerbocker Company.

Q. What was the amount of those bonds that you thus found outstanding?

A. I think it was one and a half millions; it was certainly a million and two or three hundred thousand dollars; and I think it was but one and a half millions, which was the full amount of the mortgage.

Q. Who did you find held the bonds up to the full amount of the mortgage?

A. The estate of Cutting's grandmother, some old lady, to whom they were executed.

Q. Elizabeth Cutting?

A. No, Mrs. Bayard; her estate held all these bonds.

Q. Did you make an injuiry or cause an inquiry to be made at that time concerning the validity and amount of that outstanding indebtedness?

A. Yes, sir.

Q. Of whom did you inquire?

A. The officers of the Knickerbocker Company and their counsel.

Q. The names?

A. I could not tell you now; I talked with William Bayard Cutting about it.

Q. The trustee?

A. Yes, sir, and his brother, Robert Fulton Cutting, and their counsel—his name escapes me now; they assumed the mortgage, the parties did, that took the title, and all the bonds.

Q. Who took title?

A. I think the stock was transferred.

Q. There was no transfer of the real estate?

A. I think not; there was a paper between the parties which recited the mortgage and bonds.

Q. Will you refresh your memory?

(Book containing the report of the last Senate investigating committee, pages 162 and 163, presented to witness).

A. I think that is it; I think the amount of the mortgage
8980 was $1,200,000, as it is herein given; and the gentleman that I consulted with was Mr. Cardoza, who was a witness to this agreement.

Q. That was in connection with the transaction of the purchase of 15,000 shares of the stock of the Knickerbocker Company, was it not?

A. I don't remember how much stock it was; it was in connection with the purchase of this stock of the Knickerbocker Company and the transfer of that stock.

Q. By whom was the stock owned?

A. I don't remember.

Q. Did you see the certificates?

A. I don't think I did; I don't remember to have seen them.

Q. Who did see the certificates?

A. I don't know but I did, but there is a great deal of detail about these things and I can't remember it.

Q. Please omit the details and tell the transaction acquiring the Knickerbocker property?

A. The most of my conversation was sometimes with Mr. Francklyn and then with Mr. Cutting and then Mr. Cardoza, and then with the officers; when these titles were passed I was present, and I think I was present when the stock was passed over; I think I examined it but I don't remember it.

Q. To whom was it passed over?

A. Mr. Ottendorfer, Mr. Francklyn, and I could not say who the others were without looking at some papers.

Q. Who individually received their stock or the certificates?

A. I presume I did as counsel for the company; turned it over to some one of this committee, but who it was I don't remember; I mean to say one of these trustees.

(By the CHAIRMAN:)

Q. You were one of the trustees.

A. Yes, sir.

Q. Why should you turn it over to any one else?

A. It was to some one of this committee as custodian.

8981 Q. You had it in your hands; what did you do with it?

A. It went into the hands of one of the trustees who, I suppose, put it at the office of the Municipal Company.

Q. Why should you, being one of the trustees, pass it over to one of the co-trustees?

A. The reason is I have a thousand and one papers in my office and it would be unsafe to leave them there; these papers were sent to the office of the Municipal to be kept; I have not seen them since, but I presume they are there.

Q. Have they been produced when you were on committees there?

A. I would not say that; I think I have not seen it since; I have not seen the stock since—when this consolidation took place this stock by these trustees was all transferred to the Consolidated Company for the benefit of the stockholders of the Municipal Gas-light Company; I signed all the transfers, I think.

Q. Anybody else?

A. I have a recollection of some names ahead of mine on the certificate.

Q. Did Mr. Ottendorfer sign it?

A. I think he did.

Q. Did Mr. Gawtry sign it?
A. I believe he did.
Q. Did Mr. Francklyn sign it? He was the president?
A. I am in doubt about it; I would not swear to it.
Q. Did Philip Allen sign it?
A. I have the same to say; the stock can be produced; it is somewhere in the company.
Q. Was it one certificate or more?
A. My impression is there was one or two certificates; I think one, a small one, was in the name of myself, to constitute me as a director of the company; and for the balance of the stock another certificate was issued; the other was in the name of all the trustees.
8982 Q. That certificate may have been issued at the time the trust was established?
A. I think it was.
Q. Prior to the issuing of that one certificate, where was the stock?
A. In the names of the former holders of the stock, but who they were I could not tell you.
Q. When this transaction was closed that stock was acquired from the former owners?
A. Yes, sir.
Q. In what block was it acquired and from whom?
A. That is beyond my recollection.
Q. Have you any recollection about the transaction whatever that will enable you to say where that stock came from?
A. Yes, sir.
Q. Give it.
A. That the largest amount of that stock stood in the names of one or two of these gentlemen as the executors of Mrs. Elizabeth Bayard.
Q. They also holding the bonds?
A. They held a large amount of bonds; I don't wish to say this certainly; it is only an impression which I have.
Q. How much of it is the question?
A. The books ought to show.
Q. Which books?
A. There ought to be some books showing the stock of this Knickerbocker Company; I don't know where they are.
Q. You certainly would not have approved the title to 15,000 shares of stock for the entire ownership of the Knickerbocker Company if, as counsel in the transaction, you had not been informed who owned the stock?
A. No, sir; I had fair evidence who was the owner of the stock, but I don't recollect it all.
Q. Was there an agreement of transfer, signed by those who owned the stock, other than the indorsement of certificates?
A. I think not; I don't remember of any other paper than
8983 a guarantee that I insisted upon some of these gentlemen giving us.
Q. That related to the indebtedness?
A. Yes, sir; I was perfectly satisfied about the stock.

Q. Did you testify anybody else held any of that stock except the same parties who owned these bonds?

A. No, sir.

Q. Is there any paper or book or writing, of any character, that will refresh your recollection?

A. There ought to be a transfer, a stock-book of the Knickerbocker Company.

Q. Did you see such a book?

A. I don't remember the detail of that.

Q. Would you have approved as counsel of this transaction if you had not seen such a book?

A. If such a gentleman as Bayard Cutting told me and showed me a certificate of the Knickerbocker Company, that was as good as a stock-book, and better; the certificate is the real title and not the stock-book proper; and I probably saw the old stock certificates; I think I did, but I could not say whose name they were in.

Q. Are you confident they were all owned by the same party?

A. No, sir.

Q. Who did you pay any money for that certificate?

A. There was considerable money paid at the time, but to whom it was I don't remember.

Q. Do you remember that $50,000 was paid for that stock?

A. Well, I don't remember exactly how much was paid for the stock; there was a large amount paid in the transaction.

(By the CHAIRMAN:)

Q. Is it your best recollection it was $50,000, or about $50,000?

A. It is that it was more than that; I think there was $350,000 of money paid out at that time; precisely to whom it was paid or on what it was paid I don't remember; I know that amount of money was paid in some way.

8984 Q. For what, this Knickerbocker stock?

A. Yes, sir.

Q. And also on account of indebtedness?

A. Either $300,000 or $350,000 was paid in addition to the mortgages which were on the property at the time, and it cost with what was on it, over one and a half million of dollars; that is perfectly certain, but just the details of that I can't give; I can't carry five years of business in my mind; I am able to recollect the large amounts better than I am the details.

Q. Do you remember to whom those papers were made?

A. Either to the Cuttings or those parties that were there at the time the title was passed.

Q. By passing the title you mean the delivering of the certificates?

A. Yes, sir.

Q. Do you remember to whom the money was paid?

A. I think it was paid either to the Cuttings as executors, in some way or other connected with the estate.

Q. Which particular Cutting was there that day and took the money?

A. I believe Bayard Cutting was there, and if he said he was not I would think I was not right but would believe he was.

Q. Was R. Fulton Cutting there?

A. I would not say that he was, but during the transaction I think he was there.

Q. Then that money was paid to one of the Cuttings, to one or the other of these gentlemen, was it not?

A. I don't know; I think it was.

Q. Was Mr. Stephens there?

A. Who is Mr. Stephens?

(By the CHAIRMAN:)

Q. William A. Stephens, the president of the Knickerbocker Company?

A. I believe he was; I think Mr. Stephens and John Sickels, the secretary, were both there.

8985 Q. Did they receive any of that money?

A. I don't think they did; I don't think they had any authority to receive the money which was given for the stock; as I understand, it was a transfer of the stock.

Q. That transaction then substantially was the transfer of the stock and all the property of the Knickerbocker subject to an express indebtedness, with a guarantee that such indebtedness should not exceed a fixed amount, and the payment of money on such transfer?

A. As far as I know it that was the transaction; I don't know any other thing connected with it.

Q. Was any money paid at that time to reduce that indebtedness?

A. I think not; I know there was not any money paid to reduce it.

Q. Did you subsequently acquire any interest in any part of that indebtedness or that payment?

A. No, sir, never.

Q. When, if ever, was that indebtedness reduced?

A. I would have to give you now my best recollection; I think the mortgage was so drawn that it became payable in installments; a certain number of bonds were payable each year, and when those became due from time to time the Municipal Company made the payment; that is my recollection.

Q. Unless the indebtedness was reduced in that way it has not since been reduced to your knowledge?

A. No, sir, not at all; the indebtedness that was paid by the Municipal in that way was assumed by the Consolidated Company when the consolidation was made.

Q. Being a director of that company you would know if since its assumption any of it had been discharged?

A. Well, sir, I don't carry the detail of that in my mind;

8986 I know the fact that it has not been paid except in that way, paying off the bonds as they became due; and the other assumed by the Consolidated Company.

(By the CHAIRMAN:)

Q. Were any bonds paid by the Municipal after this transaction which you have given and before the consolidation was effected?

A. My impression is that there were some of the bonds that became due, a few of them each year, but I can't carry that in my mind distinctly.

Q. Then you are not able to swear that any of them were paid during that time?

A. I have a recollection that money was paid.

Q. Do you recollect that any such bonds were paid during that time?

A. I would be willing to swear more positively if you would allow me to look and see; my impression is that some of them were paid; I would not swear to the amount; I have the impression but I would not swear to any thing more.

Q. Are you willing now to swear from your present recollection that any of those bonds were paid during the time designated by me in my previous question?

A. I would not say; I have not a distinct recollection of the occasion but I do have the impression.

Q. Whether from your present recollection you are able to swear that any of those bonds were paid by the Municipal during that time?

A. I should not like to say; that is, that I recollect.

Q. You would have to say no then?

A. Yes, sir.

Q. The answer to that is no?

A. My impression is that at the meeting of the board that question of paying off some of these installments came up when I have been present.

Q. And further than that you don't know?

A. No, sir; if I could be allowed to examine the books of
8987 the Municipal to refresh my recollection I could state positively.

Q. What books of the Municipal will show this transaction; designate the books which will refresh your recollection?

A. I should suppose the cash-book and the check-book would show it.

Q. What books of the Knickerbocker, if any?

A. I don't say that the Knickerbocker books would show it.

Q. Did you ever see the books of the Knickerbocker?

A. I think I have seen some.

Q. Did you ever see the stock-book?

A. I never asked for it.

Q. You were a member of the board after the amalgamation?

A. I never had occasion to see it.

Q. Do you know anybody who would be likely to have any more information on that subject than yourself?

A. Yes, sir.

Q. Who?

A. Mr. Gawtry ought to know more about the books, if there are any; my recollection is that when we took this property there were only a very few books in the whole concern.

Q. If Mr. Gawtry is unable to tell us, can you suggest some other individual, except Mr. Gawtry, who can?

A. No, sir.

Q. What information did you obtain in closing this transaction as to the basis of issuing this $1,200,000 of bonds secured by mortgage?

A. I ascertained that they had a large amount of real estate; that they had works erected on that real estate; that they had mains laid down—I don't know how many miles of mains, but a good many; that I knew they had a basis for a capital in that.

Q. Did you inform yourself as to any other basis than that for the issue of such bonds?

A. No, sir; I did not go into the organization of the company, except to see that they had filed their certificates properly.

8988 Q. Did you not go into the validity of those bonds as an existing indebtedness sufficient to inform yourself generally concerning the cause of their issue?

A. No, sir.

Q. Did you not ascertain that those bonds were in part issued to take up a preceding indebtedness arising from the construction of the works, more or less, and that the balance were issued for something else?

A. I would not like to say that I remember that.

Q. Will you not testify that you acquainted yourself at that time with what the facts were in respect to that before approving the assumption of this $1,200,000 indebtedness?

A. No, sir.

Q. Do you mean to testify that this indebtedness was assumed regardless of how it was created?

A. Yes, sir; I would like to say that I considered that the property that they showed to us, the real estate, its mains, meters and its works, were worth all or more than the price that was paid for it in addition to the indebtedness upon it; and that we considered that the indebtedness had not been given for any thing near what the property was worth.

Q. That is to say, you considered that it was worth more than $1,500,000?

A. Yes, sir.

Q. How much more did you consider it worth?

A. A good deal more; worth more to us probably than to anybody else inasmuch as they were competitors with us.

(By the CHAIRMAN:)

Q. Did a part of the value of the Knickerbocker property to the Municipal consist of the fact that by acquiring the property of the Knickerbocker the Municipal would get rid of a competitor and of competition?

A. I think not, sir. Our chief object was to get their territory.

8989 Q. The question is the chief part?

A. It is my recollection that there was some agreement between the two companies, that one should not come below a certain

line and the other would not go above it; by abrogating that agreement, that was worth something to the Municipal because it extended their territory.

Q. Now, perhaps you can answer directly the question; did a part of the value of the Knickerbocker property to the Municipal consist in the fact that by acquiring the property of the Knickerbocker, the Municipal would get rid of a competitor and of competition?

A. As it then stood there would be no competition; we got rid of the agreement so that we entered into their territory.

Q. You know what the question means and to what it relates, and you have an opinion as to whether that entered into the value of the thing. I would like an answer to that question?

A. Would it not answer if I gave the statement as the fact is?

Q. No.

A. I didn't think they were our competitors then.

Q. Your answer is not to the question?

A. I think I would be justified in answering no; if you will follow it up they were not then competitors as I understood.

Q. Either actual or prospective competitors? Did this purchase in fact remove a prospective competitor?

A. I think not, sir.

Q. Did it in effect get rid of an agreement which would have resulted, if carried out, in a competition with the Municipal?

A. If it had not been made, perhaps you mean?

Q. No, which if carried out would have resulted in a competition with the Municipal?

A. The agreement, if carried out, prevented competition; that is my recollection.

8990 Q. That agreement was prior to the purchase?

A. Yes, sir.

Q. At the time of the purchase there was an existing agreement?

A. Yes, sir; when we took that property in that way it abrogated the agreement and enlarged our area.

(By Senator MURPHY:)

Q. It was to the effect that one company should not encroach upon what they believed to be the property of the other?

A. Yes, sir; it left us free to go on to the property.

(By Senator ROBINSON:)

Q. That agreement which existed prior to the purchase restricted the territory which it should occupy?

A. Yes, sir.

Q. Is there any record of that agreement in the Municipal office?

A. I don't recollect; I was told there was such an agreement.

Q. About what year was that agreement?

A. You must not ask me to carry those things in my mind; I have, perhaps, a thousand such agreements in a year.

(By Senator ROBINSON:)

Q. You think you have seen it?

A. Yes, sir; I am very confident I have.

Q. You think you have seen it, and it was in writing?
A. Yes, sir.
Q. Do you think it was in the office?
A. I am not positive about that; I am a lawyer and I know how it is; I would not like to be put in an improper position; my honor is at stake; if there is such a paper you shall have it; I don't mean to conceal any thing.
Q. Is it not a fact that when this purchase was made, as you have detailed, the Knickerbocker was not making gas, but gas was being furnished to it by the Municipal Company under an agreement in writing?
A. It is my impression they didn't stop making gas until that day; a verbal arrangement was made that this should be
8991 carried out, and we would furnish them the gas, and it was carried out afterward.
Q. That verbal agreement is at page 51 or 61?
A. There is where you would catch me again.
Q. About when was this agreement; the purchase was in March, and the agreement under which the Municipal furnished gas to the Knickerbocker was in February; how long anterior was it that this agreement was that it should not encroach; the paper will show it?
A. I don't remember that paper about not furnishing them gas; while we were talking over this thing we agreed to furnish them gas; I did not read the paper; they had agreed between themselves.
Q. Were you ever present at the meeting of the board of directors of the Consolidated Gas Company when any statement was presented respecting the financial condition of the company?
A. I think there has not been any statement that I recollect; the matter was so recent, and the facts about the consolidation were so fresh in our minds that we didn't need any such reports or statements, and we knew exactly how the properties stood and what we got; there has been a great deal of confusion and the committee has not been able to work up to the ordinary methods of doing the business.
Q. A dividend was declared last May?
A. Yes, sir.
Q. Was there a written statement made before the board when that was declared?
A. No, sir—there was a statement; I asked them whether they had made enough money to declare this dividend, and the treasurer showed the statement that they had.
Q. Who made the statement?
A. The treasurer; he said there was money enough earned
8992 to make a dividend of three and a half per cent. and something more.
Q. The dividend was voted without any further statement being presented?
A. Yes, sir.
Q. Any member of the board ask for further particulars?
A. No, sir.

Q. Any committee appointed to ascertain if the finances would admit of it?

A. No, sir.

Q. As a matter of fact, don't you know that the finance committee never recommended any dividend in May or October?

A. I have no recollection.

Q. You have no recollection of that?

A. No, sir; I think it is not the duty of the finance committee to recommend it; as a member of the finance committee I said I knew how the finances stood.

Q. The subject of a dividend never was mentioned?

A. Not by the finance committee.

Q. They never made a report on that subject?

A. Not as I recollect.

Q. You think that dividend has been earned within the last six months?

A. Yes, sir.

Q. How do you know if you never made an examination?

A. How can I tell anything except from what the officers tell me; I trust my officers.

Adjourned until Saturday, November 28, 1885, at 11 A. M.

NEW YORK CITY, FIFTH AVENUE HOTEL,
November 28, 1885.

The Committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain appears as counsel to the Committee.

8993 JOHN H. SHERWOOD, a witness called by the counsel to the Committee, being duly sworn, testified as follows:

Q. It is in view of an incident yesterday that you make your statement as a witness, and as any other witness would make it, and thus repeal what you yesterday stated to the Committee?

A. I think in view of the public attack that was made by Mr. Ottendorfer on me yesterday, stating that half a dozen gentlemen would make such and such assertions, that I made such remarks at Kaaterskill Hotel as he attributed to me, I think they should be put on trial, and that he should bring those gentlemen here to testify; I only made a slight reply to Mr. Ottendorfer yesterday, and I would prefer that personalities in this matter should be kept out; the subject which you are investigating is one of great importance to the public; it seems to me that you are fishing for a minnow this morning, when sharks are to be caught in the water; I am ready to answer any questions.

(By Senator MURPHY:)

Q. I think the only question to be answered is in reference to the charge Mr. Ottendorfer made; he stated that he was informed by reputable citizens that you made a statement which he repre-

sented yesterday, and that he could produce the witnesses to substantiate it, that you said the gas company had spent $130,000 at the Legislature last winter, and that they would be forced to spend $500,000 more the coming session?

A. That statement, made in that shape here, is a distortion of facts and untruthful.

(By the CHAIRMAN:)

Q. We have nothing to do with personalities; but it was intimated that somebody had knowledge in relation to corrupting legis-
8994 lators who were in opposition to the gas bill, so called, of last winter; if the witness has any disclosures on that subject which can lead to ascertaining the truth about it, and to the correction of the abuse that is believed to have existed and which ought to be prevented by all proper means, if the witness has any knowledge which can contribute to that result, we would like it?

A. I never have asserted or claimed that I had any personal knowledge of such facts; you say, if it is believed to have existed; I say that it was believed and is believed now that such means were used; the papers were full on the subject; almost every paper; as the president of the Gas Consumers' Association, hearing so much on the subject, it would be impossible for me to go back and tell you which or what gentleman has said these things to me; but I suppose it is within the knowledge of every gentleman in this room that this subject was notorious here last winter—the subject of gas legislation.

Q. Has any one represented to you that he knew anything touching this matter.

A. Yes, sir.

Q. I don't mean whether he had read newspapers or heard people talk, but whether he heard any one represent that he knew about it?

A. Yes, sir, these things: that matter has been stated to me as persons usually state a subject of that kind in conversation with any other person; I didn't go to Albany but once this last winter, and then I was ordered out of the Assembly chamber before I had been there five minutes, and I made up my mind it was not a good place for me, and I didn't go there again; now if you ask me who told me, or said to me that money was being used up there, I can give you a great many names; I will not say that they told
8995 me; it was their personal knowledge—personal knowledge is pretty hard to get at.

Q. Have any of the men who are interested as stockholders in these companies, or any member of this Consolidated Gas Company, or stockholder made any statement to you to the effect that money was being used at Albany?

A. Yes; that was in the conversation between myself and a friend of mine, who is a stockholder of the Consolidated Gas Company.

Q. When was that?

A. It was on the piazza of the United States Hotel, at Saratoga, last summer; it brings me in conflict with personal friends to go into this matter, and I don't think it is necessary.

Q. Was he in a position to know any thing about it, whether it was so or not?

A. No; he is a manipulator of stock or manager of the gas company.

Q. Was he director in any of the other companies at any time?

A. I don't know.

Q. Was he in a position that he would be likely to know whether there was money used or not?

A. No, sir; I don't think he would.

Q. You gathered from the talk, what he was saying to you was simply the effect of the newspapers on the subject, a rumor, talk?

A. No, sir, but that it was what he considered to be a part of the scheme for effecting gas legislation.

(By the CHAIRMAN:)

Q. That he gave you to understand that the purchase of legislative votes was a part of their scheme for effecting legislation?

A. Yes, sir.

Q. I would like to know what he said then?

A. It was a casual conversation here last summer; I met Charles G. Landon on the steps of the United States Hotel; he asked
8996 me how I got on with the gas fight; I told him I was not in that now; he says, "if you want cheaper gas why don't you make it yourself;" I says, don't you know I cannot lay an inch of gas-pipe in the city of New York, and I could not supply the gas, and is it possible that you, a large owner of gas stock, do not know that a law was passed in 1883 to prevent any other parties except the present gas companies from laying a foot of gas-pipe in the city of New York, and he said, "no, I never heard of such a thing," and I said, I tell you it is so, and he said, very well, if you say it is so I will believe it and I will put you right at the club; for gentlemen have asked me why you was not man enough to go out and make gas yourself, and he said "I will bring that matter up at the club;" in my conversation with Mr. Landon, I advised him to talk with his associates and see if we could not have a fair adjustment of this gas question, and he said, that he wanted nothing beyond a satisfactory condition of affairs; I says to him, I believe you will be safer to co-operate with the gas consumers of New York than to go to Albany for legislation, and he said "I believe so too;" I said it was reported that it cost a great deal of money at Albany last winter, and he said, "legislation has always cost us money and we expect to pay for it;" that is the substance of the conversation.

(By Senator ROBINSON:)

Q. In this talk at the Kaaterskill Hotel, did you say that your folks proposed to go to Albany and make it cost this gas consolidation money to get legislation?

A. That is utterly untrue.

Q. Did you state anything like it?

A. If you want me to state the circumstances from memory, as near as I can, I will try and give it between me and Mr. Harker; of course I have not tried to think of it until yesterday.

8997 Q. I understood Mr. Ottendorfer to say that the effect of your remark was, your intention to procure legislation which would induce them to spend money to prevent it?

A. I think the substance of Mr. Ottendorfer's assertion yesterday was that the Gas Consumers' Association and myself were making a raid upon the gas monopoly of this city.

Q. You utterly disclaim that?

A. Yes, sir; in conversation with Mr. Harker at the Kaaterskill Hotel, I told him I thought it was a great piece of folly to go to Albany and spend money as I had reason to believe they had last winter, and that I believed it had cost the Consolidated Gas Company in the neighborhood of $200,000 last winter, and if you go there another winter I hope it will cost you half a million; I have been called by one of the largest owners of gas stock in this city a thief, and I have been called a raider, now I shall survive that, and I am willing to submit my action in this matter to the public, and abide the consequences.

Q. You think the trouble will be with the public and not this gentleman?

A. Yes, sir.

(By Senator ROBINSON:)

Q. You say you was shut out of the Assembly chamber?

A. Yes, sir; it was on the floor; a gentleman came and told me there was a resolution passed and that I must go out.

(By Senator MURPHY:)

Q. Do you know whether there was a call of the house at the time you was excluded from the chamber?

A. I don't think there was.

(By Senator MURPHY:)

Q. If there was no call of the house, you had a right there.

A. My associates all went out with me into a public room; I am not conversant with the rules of the Assembly chamber; I was
8998 told there was such a resolution passed.

Senator MURPHY: It was a standing rule of the house.

The CHAIRMAN: I think it is due to the house to say that it was probably a rule of the house being enforced.

Mr. TREMAIN: The Assembly had been under a call of the house and the call of the house was suspended, and that of course opened it, but it was not opened and the debate proceeded.

Senator MURPHY: The Speaker of the Assembly evidently forgot to order the house to be opened.

The WITNESS: I was told that I was excluded from the Assembly chamber, and I went out from there.

HENRY DAY is recalled and testifies as follows:

Examined by Mr. TREMAIN:

Q. Have you brought all the papers in your custody or control of which you have any knowledge relating to the Knickerbocker Gas-Light Company?

A. All that I have under my control and that I had in my office while this Committee has been existing; there are other papers which I have knowledge of which are not here.

Q. What papers have you knowledge of that are not here relating to the Knickerbocker Company?

A. Two or three contracts that I didn't think of, that I have some memoranda of; that I know have existed, and that I have seen them.

Q. Of what date?

A. There is a paper dated November 16, 1880, between the Knickerbocker Gas-light Company and the Municipal Gas-light Company.

Q. Which you didn't have?

A. I think I did find that one.

8999 Q. That which you didn't find?

A. That paper is here; I have got that paper.

Q. What are the papers that you produce—the dates?

A. There is another paper which I have, dated August 2, 1883; that is the one; the McKenzie and Sayre Manufacturing Company to the Knickerbocker Gas-light Company, giving them the privilege of certain renewed patents which the Knickerbocker had purchased of that firm; this paper is dated August 2, 1883; there is an agreement, dated February 13, 1880, between the Municipal Gas-light Company and the Knickerbocker Gas-light Company, in relation to furnishing gas, which I have not got; there is a third paper, dated March 11, 1880, between the Municipal Gas-light Company and the Knickerbocker Gas-light Company, which refers to a contract dated September 25, 1876, and agrees that the Municipal may lay mains and send gas north of Fifty-ninth street, in consideration of $300,000; that is the matter which I referred to yesterday.

Q. To whom was that paper given by you?

A. That was returned April 29, 1883; I sent it to the company.

Q. Have you brought any and all papers that you know of relating to the Municipal Gas-light Company?

A. I think that all the papers that relate to that are here; I don't know of any other papers of the Municipal that I have seen which are not here; I think it is proper that I should explain my testimony of yesterday, arising out of a better knowledge that I got from the contract in respect to the $300,000; I find that there was a contract made in 1876 between the Knickerbocker Gas-light Company and the Municipal Gas-light Company to this effect: The Municipal assigned rights to the Knickerbocker Gas-light Company to use

9000 their water gas patents for illuminating gas to be distributed north of Fifty-ninth street, and gave an exclusive right to all the Tessie-du-Motay patents, such as the Municipal were making gas from at that time; there was a further agreement that between Thirty-fourth and Fifty-ninth streets they should have the privilege, but not the exclusive privilege of using those patents.

Q. That is what the Municipal gave the Knickerbocker?

A. Yes, sir, gave those rights.

Q. Now, what did the Knickerbocker Company do in return for that?

A. They gave them a royalty of five cents a thousand upon all the gas they should manufacture under those patents and distribute, with the privilege that they might satisfy the royalty by paying at any time $50,000; now, sir, in 1879, the Knickerbocker Company commenced a suit against the Municipal Gas-light Company upon that contract; they asked for an injunction to restrain the Municipal going north of Fifty-ninth street with their mains; the Municipal took the ground, as they would not use this patent and were acting under the McKenzie and Sayre patent, they had a right to go into that territory north of Fifty-ninth street; they commenced a suit and asked for an injunction from laying any pipes, as they said we were about to do, in 1880, until the negotiations were completed between the Knickerbocker and the Municipal for the transfer of stock; as a part of the consideration I preferred that this $350,000 should be made up in this way; I was counsel for the Municipal; I said to my client, this $350,000 which you, the Municipal, are about to pay to them it is possible that if any of the stockholders of the Municipal Company should object to this, your paying, they may hold you re-
sponsible; I prefer, as there is a suit pending against you,
9001 you should settle that and take the $300,000 and settle that
claim and open the right for you to go north of Fifty-ninth street and leave only $50,000 to be paid into the stockholders of the Knickerbocker; that, I said to my client, will relieve the directors of any claim that the stockholders of the Municipal would make; it was only another method of paying them a portion of that $350,000; it was a lawyer's method of shielding his clients.

Q. To whom was that $350,000 paid?

A. I think $300,000 was given to the Knickerbocker for these damages, to settle this suit.

Q. To whom?

A. I could not say to whom the check was given.

Q. Was it paid in a check?

A. Yes, sir, I know it was, but how it was drawn I could not say; it was given in the office of the company.

Q. Who represented the Knickerbocker in the closing of that transaction?

A. Mr. Sickels and Mr. Stephens, and the Cuttings were there.

Q. Were both?

A. I should be very confident to say that they were both there.

(By the CHAIRMAN:)

Q. When this transaction which you have now stated was completed what was the status of the Knickerbocker and Municipal with reference to each other; the instant this was done where did it leave them?

A. It left the Knickerbocker with its stock all transferred to five different men who acknowledged themselves as trustees, holding it for the Municipal Company in order that the corporation should

not be dissolved; the Municipal was left in this way: They had advanced $300,000 in order to get rid of this claim that they made upon this territory north of Fifty-ninth street so that they could go in, and there was an agreement made to that effect, and
9002 which I executed; here is the agreement opening the territory and giving up all claims for damages; both parties then were to use the territory in common, and $50,000 was advanced by the Municipal toward purchasing this stock.

(By Senator ROBINSON:)

Q. The real transaction was that $300,000 does away with all damages and lets them into this territory, and they buy the stock?

A. Yes, sir.

Q. Who advanced this $350,000?

A. The Municipal.

Q. Did the Municipal at or about that time increase its capital stock at all?

A. I don't think they did at that time; they did afterward; they were obliged to build very largely.

Q. What was the nominal share capital of the Municipal Company in 1879?

A. Those facts I don't carry in my head; I think they started with $500,000 and increased to $1,000,000, and then $1,500,000, and then to $2,000,000, and then to $3,000,000; I don't know the dates.

Q. Don't you know in 1879, its capital stock was nominally $2,000,000?

A. I don't recollect at that time; If you say anybody has testified to that I should believe it; I don't remember the dates.

Q. You were counsel for the Municipal Company from 1879 to 1883?

A. Yes, sir.

Q. Do you remember that you took proceedings to increase this capital stock in 1880, from $2,000,000 to $3,000,000?

A. I remember that fact, but I don't remember the date.

Q. Were those proceedings instituted and determined upon before this transaction respecting the Knickerbocker stock?

A. I could not say; in my own mind I had no reference to the Knickerbocker transaction at the time that was done, but I don't know what the officers had.

9003 Q. You know what was done with the million of stock, the result of this increase?

A. Yes, sir; I think I do.

Q. To whom was it issued?

A. The stockholders were allowed to come in and take *pro rata* in the first place, and take the shares which were held, and I think that was all taken up; it was paid for in cash.

Q. What was done with that $1,000,000?

A. We enlarged the works of the Municipal largely; we had to build them all over, and we had to build or enlarge the works of the Knickerbocker at one time; we had spent at the time that we closed this transaction with the Knickerbocker $400,000 and $1,100,000

in putting down mains in their district, and improving the works, and then the works of the Municipal were built over after that.

(By the CHAIRMAN:)

Q. When the Knickerbocker was transferred to the Municipal they manufactured gas by what process?

A. This McKenzie and Sayre process; they had the original patents, and this agreement—there were some improvements they had made, and I drew a contract giving them the right under those additional patents which they had got.

Q. At the same time the Municipal was making gas by what process?

A. By what is called the Du-Motay process, or water gas.

Q. Now, when these works were improved and enlarged, what process was used?

A. The Du-Motay process; all the works were cleaned out, and these new works, entirely new, were put in.

Q. What was done with the old works?

A. I think for old iron; generally those retorts were good for nothing, except for old iron.

Q. Who was the contractor under whom that reconstruction was effected; you say that this $1,000,000 was realized when the
9004 stock increased?

A. Yes, sir.

Q. In cash?

A. Yes, sir.

Q. And that some of the money was spent in enlarging the works?

A. Yes, sir; on the Municipal and also on the Knickerbocker; laying mains I ought to say, because we were extending our mains all over the city.

Q. Who was the man who did that work and received that money?

A. No man received the whole of the money, but Rowland & Company, of Hunter's Point, did the work on both the Knickerbocker and Municipal.

Q. Was any other money expended on the works of the Municipal or Knickerbocker at or about that time, except through Rowland?

A. I don't know.

Q. Any considerable amount, as a director; you have knowledge?

A. I have no knowledge of any bills being brought before the committees from other persons; I remember of his bills being very large one.

Q. Can you tell me, Mr. Day, how much of that $1,000,000 was spent on the Knickerocker in proportion to the amount spent on the Municipal?

A. I don't know personally of the expenditure of any money; that is done by the officers.

Q. Did anybody have any more knowledge on that subject—did Mr. Francklyn?

A. Mr. Francklyn or Mr. Gawtry; somebody ought to tell you; I think if you put the question in writing, and ask, they will tell; I am interested in that, and if there has been any taken out of it, I have been cheated; I am talking about the increased capital; I am

more interested in that than any gentleman here, and I will undertake if the Committee desires to know any specific facts as to
9005 where money has gone; I am a director and in honor bound, if the money has been spent, to try and find it out; I would like to know exactly what you would want because there is a multitude of books, but specific facts I will endeavor to give you honestly and fairly; I have more right on account of my position; I am not only a citizen but a director; you are acting for me just as much as for anybody else.

Q. If you can tell us how to find any books except the ledger in the Knickerbocker Company please do so?

A. I don't believe there are any more; when I was managing their business I asked them once if there were any more books and they didn't appear to have any more; they had a lease of this property from the Knickerbocker to the Municipal; the Municipal did all the business.

Q. Under that lease there appears to have been so-called rent paid; to whom was that $75,000 a year paid?

A. I don't know; if it was paid it was paid to these trustees and they turned it back to the Municipal.

Q. To whom was it paid?

A. I don't know; I don't believe it was paid as a matter of fact; if it was it was only passed around and came back.

Q. Who paid the interest from 1880 on these bonds?

A. The Municipal Company paid it.

Q. Was that in addition to this rent?

A. Yes, sir.

Q. Was that interest paid regularly?

A. Yes, sir.

Q. To whom?

A. To the Cuttings as attorneys or executors of Mrs. Bayard; she died while these bonds were in existence.

Q. You mean that this rent might have been paid to one of the trustees and it went back to the Municipal, and you were one of the trustees?

9006 A. Yes, sir; I never heard of the rent being paid over although there was a form of a lease in order to keep the existence of the two companies and the proper status of the companies, as it was proper we should have a lease to show that it was by the consent of the Knickerbocker, and if there was ever an accounting we should have to account for that rent and the interest and we should have to pay it back.

Q. What special privileges did the Knickerbocker Company own, if any, at the time the Municipal acquired this interest in 1880?

A. They had under one of these contracts the exclusive right to use the territory and distribute gas north of Fifty-ninth street.

Q. Under a contract with whom?

A. The Municipal Company.

Q. With that exception what other privileges, if any, did the Knickerbocker at that time enjoy?

A. They had the privilege—not exclusively—of laying mains and

distributing gas between Thirty-fourth and Fifty-ninth streets; that was not exclusive.

Q. That was under a contract of 1876 with the Municipal?

A. Yes, sir.

Q. With this exception, what other privileges, if any, did the Knickerbocker enjoy at the time of this tranaction in 1880?

A. They had I think, three different corporate charters, one of which was an exclusive one to lay mains in the Central park; we have that right now.

Q. What is the chapter of that act or year?

A. I can give it by and by, but not now.

Q. Was it 1869?

A. I think it is earlier than that.

Q. It never has been used?

9007 A. No, sir; but we got it from the Knickerbocker, and I examined the title all through, and also one or two charters they had.

Q. That is one; what other, if any?

A. They had a charter of what is called the Anthracite Gas Company, and then it was changed into another, and they had under that the right to lay mains all over the city; I think it was called the Anthracite Gas Company at first, and it was changed into the Union.

Q. That the Knickerbocker Company had acquired the right of the Union Gas-light Company under its charter with the city?

A. I think it was the right acquired by the Anthracite Gas-light Company.

Q. Did that company ever in fact do any business?

A. I think not.

Q. The Anthracite?

A. I don't know, it is so far back; I never heard whether they did or not.

Q. You never knew of it if they did?

A. No, sir.

Q. Now, what other privileges of any kind did the Knickerbocker enjoy, if any, in 1880, at the time of this transaction?

A. They had the McKenzie and Sayre patents for manufacturing, and the exclusive right for this city; our company has discontinued manufacturing under them, but they held the exclusive right to the city of New York under these patents.

Q. What other privileges or rights of any kind did the Knickerbocker in 1880 enjoy?

A. I don't remember of any others.

Q. Is there any other legislation by special act or contract with the city that the Knickerbocker then had that you have not mentioned?

A. I don't remember of any thing more.

9008 Q. Did they acquire, subsequent to 1880, any other so-called privileges or franchises—the Knickerbocker?

A. Yes, sir, a right in four or five patents that came from the McKenzie and Sayre Manufacturing Company, and which they turned over to us in 1880.

Q. Was any money paid in that transaction?

A. No, sir, but if any improvements were made they should have the advantage of them.

Q. Those improvements were not utilized?

A. No, sir.

Q. With that exception, did the Knickerbocker acquire any other rights or privileges?

A. I don't remember of any thing else.

Q. Is there any method in your judgment by which this Committee can ascertain how much the real estate of the Knickerbocker cost?

A. Yes, sir; I should think so; I think the Cuttings would know who bought it; they ought to; I don't know of anybody else who would know.

Q. At the time of this transaction in 1880, was any other inquiry made by any officer or representative of the Municipal Company, in respect to the value or cost of the real estate and plant of the Knickerbocker Company at that time?

A. I did not do it as a director, nor as counsel; I don't know whether the other officers did it; if they did their duty they did, but I cannot say whether they did or not.

Q. Have you any opinion as to what the value at that time was, what the real estate and plant cost?

A. No one can tell what the cost was of their pipes and meters and manufacturing apparatus, and their bulk-heads and their filling in and their real estate, no one except the man who was inside, and then an officer who was acquainted with their books; it would be impossible; I could only give what was reported to me by their officers as the value of this property.

9009 Q. You mean in 1880?

A. Yes, sir; the time that it was bought.

Q. Who made any statement to you?

A. I talked with the president and secretary.

Q. Name them?

A. Mr. Francklyn and Mr. Gawtry; and then I talked with the Cuttings about it, and I formed my opinion as to what it was worth.

Q. What Cutting was it?

A. William Bayard Cutting, and also Robert Fulton Cutting.

Q. Well, now, did you have anything to do with arriving at the values of the so-called Knickerbocker properties at the time of the consolidation?

A. I saw estimates of the property on paper, how many lots they had, what they were, and the value of the lots; and the bulk-heads and mains I had some consultation in regard to that.

Q. How early in point of time was the first one in regard to that?

A. I don't remember of any values put upon that at all until about a year before the consolidation.

Q. The latter part of 1883?

A. I should think that embraces all the period that we considered values.

Q. The latter part of 1883?

A. I should think that year would cover all our talk on that subject.

Q. When did you first hear the total amount—the aggregate of the proposed capital?

A. It was during that year.

Q. You remember who first named $45,000,000?

A. I think Mr. Smith, the present treasurer; I think he was the first man who spoke about the forty-five millions.

Q. You think that was the latter part of 1883?

A. It was during the time that we considered consolidation; I could not give the dates any closer than that.

9010 Q. You remember a good many occasions when the pooling committee were considering that subject?

A. Yes, sir.

Q. You remember reports of the sub-committee of the pooling committee on that subject which were made from time to time on the subject of consolidation?

A. I don't remember any written reports brought in; I don't know that there were any committees upon that subject except towards the last when the company was asked to bring in values, and we would compare and see what the others thought of it.

Q. There appears to have been a report made to the pooling committee in November, 1883, which was referred to a resolution adopted at that meeting, *"Resolved,* that the report and plan of the sub-committee on consolidation as submitted at the last meeting has the approval of the representatives of the New York, Manhattan, Municipal, Harlem and Knickerbocker Gas-light Companies"—does that refresh your memory so as to enable you to say that there were considerations?

A. I don't remember now what sub-committee there was or who was on it.

Q. Do you not remember it was definitely determined during the latter part of 1883 that there should be a consolidation?

A. I would not like to state the date when that was agreed upon; I am indefinite as to the time; I would say that the question of consolidation was the prime question at the time the pooling committee went into operation; they went into that pooling for that purpose; all this before that were the preliminary steps for the purpose of bringing them all into consolidation; there was talk about it little by little and scarcely anything was done until toward the last year.

9011 Q. The last year was 1883?

A. I should think it was from 1883 to 1884; I should judge that that was the time when the thing was talked about most.

Q. At a meeting at which you are recorded as being present, in December, 1883, it appears to have been voted, "That the plan for a consolidation accepted by this committee be referred as a basis to a committee of one from each company to report a plan in full detail for the consolidation of all the companies here represented, with power to call in legal counsel, and that this plan be reported to this

committee for approval on the call of the Chairman"—do you remember that occurrence?

A. I should not remember it unless you read it.

Q. Who was the legal counsel who was called in, if any?

A. I was one of the counsel and Mr. H. H. Anderson was another.

Q. Were there any others?

A. I think not.

Q. As a result of calling in counsel under that resolution was the act chapter 367 of the Laws of 1884 drafted, "An act to authorize the consolidation of manufacturing corporations," passed May 28, 1884?

A. I don't think that act was drafted by calling in counsel by this pooling committee.

Q. Was anything done by counsel who were called in under that resolution?

A. I would like to know if I am to be examined as counsel for those companies and to tell the secrets of my clients committed to me; I don't think you ought to ask me questions of that sort.

Q. You are not asked to state any communication or interview of yourself or anybody else that can fairly be deemed privileged communications; you are simply asked what, if any thing, counsel did under that resolution?

9012 A. I think counsel under that resolution simply arranged the methods of the union of these two companies and drew an agreement in regard to the companies, and how they should come in, that these two companies ought to sign.

Q. Was such an agreement drafted?

A. Yes, sir.

Q. Was there more than one such agreement?

A. I think there was only one agreement about consolidation.

Q. And that is the formal one that now exists?

A. I think so.

Q. When you commenced to draw these various agreements that were not signed the law of 1884 was not enacted?

A. No, sir; it is not so; the law of 1884 had been passed six months before there was any attempt to draw any agreement.

Q. Who drafted that act?

A. I had a hand in it.

Q. Do you testify that that act was not drafted until after the articles of agreement were first prepared?

A. Yes, sir; that is so; that I believe to be so.

Q. As the result of employing counsel under this resolution of the pooling committee that was agreed upon in December, 1883?

A. When was the act passed, sir?

Q. I have not the date; it is chapter 367 of the Laws of 1884; I have not got the Session Laws here; was not the act drafted and subsequently became a law and known as chapter 367 of the Laws of 1884?

A. No, sir; it was not.

Q. When was that act first drafted?

A. I don't remember when it was first drafted; I think it was a year before it was passed.

Q. It was drafted in 1883, then?

A. I think it was.

9013 Q. Was it drafted before amendment of the charter of New York city known as the Consolidation Act, which prohibits the laying of mains in the city of New York by gas companies, except by the consent of two-thirds of the owners of property fronting on the streets?

A. It was not drafted before that.

Q. Was it drafted immediately after the passage of that act?

A. No, sir; I had no reference to that act you just read.

Q. Did you draft the other act?

A. No, sir; I never knew of it until I heard of it.

Q. Then this act of 1884 must have been drawn in the summer of 1833, or thereabouts—or late in the spring?

A. Yes, sir; I think it was.

Q. You remember whether it was drawn before the Legislature of 1883 adjourned?

A. Well, sir, I can't remember about that; my impression is now that it was drawn a whole year before it was passed.

Q. Who assisted as counsel in the drafting of that act besides yourself?

A. Mr. Anderson.

Q. Who else?

A. No one.

Q. As passed is there any change in that act?

A. Yes, sir; almost every section was altered after it went from my hands.

Q. When did it pass out of your hands?

A. My impression is that it was the Legislature of the year before, but I would not be certain about it, and I never saw or heard of it again until it was passed; some Senator took it in committee and altered almost every section of it.

Q. Who told you that?

A. I don't remember who did tell me that; somebody said when it was in the committee a certain Senator objected to a great many clauses, and it was amended; I think the amendments were made openly—I don't know.

9014 Q. Do you remember what any of those changes were to which you have alluded?

A. I don't know; there were quite a number, but I don't remember what they are; I didn't know about the changes until the bill was passed, and I compared it with the paper I had.

Q. You retained the draft of it?

A. Yes, sir.

Q. Will you show that draft to the Committee?

A. I have not any great objection; I don't wish to have you make public my professional secrets, because I would never have another client if I should do so; if you would like to see that original draft, I will produce it.

Mr. TREMAIN: I think it might aid the Committee if you produce it.

The CHAIRMAN: It strikes me that the suggestion as to professional confidence is hardly proper here, because the question refers to a paper that has been made public.

The WITNESS: I prefer to produce the paper rather than have you think there is any secret lying back, but I would prefer that you would not publish my drafts and throw them out to the world unless you find something very bad.

Q. To whom did you give that act after it had been prepared and agreed upon by yourself and associate counsel?

A. Senator Jacobs.

Q. Did you subsequently to that delivery have any conversation with anybody about that act prior to its passage?

A. I don't remember of any conversation, but I may have talked with my own clients about it.

Q. With Mr. Francklyn or the president, General Roome?

A. No, sir.

Q. With Mr. Gawtry?

A. I don't remember.

Q. Do you mean individually when you speak of your
9015 clients? It was to ask the name of the individual to whom you alluded when you said you might have talked with your own clients?

A. I don't remember any specific occasion or person that I talked with about that bill; I only made the answer which I did because in the course of two years in matters of that kind I could hardly help talking with somebody, but I don't remember who.

Q. Was this draft of the articles of agreement made before the act was actually passed, but after it was drafted?

A. They were drawn long after the act was passed, the articles of agreement, I think at least six months, or more.

Q. Now in respect to the selection of appraisers, what action, if any, was taken by yourself toward the selection of the others at the time of the consolidation, or before?

A. My recollection is that each company first brought in their own appraisement, and I think that the appraisements of some of the companies were disagreed to, and that there was some arrangement made by which other parties should be called in to make an appraisement which should have that standing similar to arbitrators between all the parties—as to whether that went through or whether it was done afterward, I can't say.

Q. Do you remember the circumstance that the Knickerbocker and the Municipal representatives proposed that their values should be about $8,000,000 in the consolidation?

A. I don't remember the exact amount.

Q. Do you remember that somebody objected to it?

A. I remember that somebody objected to all the appraisements all around; that is relatively—one would say "if you say our property

is worth so much it is worth more than you put upon it." It
9016 was a difficult question where there were five corporations to settle the values and put it into a consolidation; it was the most difficult thing in all the transaction.

Q. Do you remember how the amount $7,781,000 was arrived at?

A. Yes, sir. Was that the amount of the Municipal?

Q. No sir.

A. What was the amount that the Municipal went in for in the consolidation?

Q. Five million one hundred thousand dollars, and the Knickerbocker $3,000,000. Do you know how the item $7,781,000 of the so-called rights and franchises, etc., of the Knickerbocker in the total capitalization was arrived at? Can you give me the general basis on which that item was founded?

A. The general basis that I considered to be adapted for the purpose of arriving at the value of the franchise was this: That we should take the values of our stock in market at the time; if the capital, for instance, of the Municipal was $3,000,000, if it stood at 200 it would be worth over $6,000,000; then taking out of that the values of the real estate and the works, the franchise ought to be the difference; that was my view generally.

Q. How was that difference apportioned among the various companies?

A. Well, they apportioned it as well as they could; one had to come down and another had to add a little; they were a long time agreeing upon it, taking all the capital of the companies at their fair valuation in the market and taking out its real estate and its personalty, then the rest of it was the value of the franchises; that, I think, is the law; that is to say, we are taxed on that basis.

(By the CHAIRMAN:)

Q. What basis did you actually adopt?

A. We considered that these properties that were worth, some of them 320, that the franchises must be exceedingly valuable; the Manhattan was worth 320.

9017 Q. The New York, what was that worth?

A. I don't know.

Q. The Metropolitan was worth how much?

A. I don't know anything about the quotations except one or two of them.

Q. The Harlem?

A. I don't know.

Q. How much did you say the Metropolitan was worth?

Mr. TREMAIN: He did not say.

A. I don't know; I think it was selling for about 220 then.

Q. Mr. Zollikoffer says he paid 245 for some about that time; how did you arrive at the gross sum of $45,000,000 as the proposed consolidation by which other values should be gauged?

A. Well, sir, I will tell you a littlee how it came about in the way in which it was put to me; I shall only do it by referring to an ex-

ample; it is an actual occurrence; the Manhattan people said "our stock is worth 320;" and if the stock is put in at market price into the Consolidated, "we ought to have the new stock at par to measure our capital, at 320, high enough, so that if we simply get on our new stock seven per cent. interest we will be satisfied," and we will not be satisfied with less.

Q. That was actually the basis upon which the proposed capital was stated?

A. As a general rule they said there ought to be enough so that it will cover the fair value of this stock in the market, so much at par.

Q. So that seven per cent. of the new proposed capital should be the dividends on the new stock?

A. I would not like to say that; it is not fair for me to reason the thing out.

Q. It is a fact that the market value of such stock is based upon the dividend it does pay?

A. Yes, sir.

9018 Q. The Manhattan was worth 320 because it had paid such large dividends, twenty-one per cent. at that time?

A. I know they said that they would not receive an equivalent if they did not get $12,000,000—three for one.

Q. Their capital was $4,000,000, and the new was capitalized at about $12,000,000?

A. That is about it; they said they did not expect to get over seven per cent., and they ought to have the stock par for that.

(By the CHAIRMAN:)

Q. Supposing the company had charged and received from the consumers of gas such a price as would enable the stockholders of the company to receive an annual dividend of fifty per cent. upon the capital invested, that would proportionately increase, would it not, the market value of the stock of that company?

A. Yes, sir.

Q. Then the theory of this consolidation was this: that if one of the constituent companies has charged the gas-consuming public a price large enough to enable the company to receive an annual dividend of fifty per cent., we must have stock in the new company at par to be equal to the value of the stock of that company and such an annual dividend, that would be it?

A. Yes, sir; that is the theory; may I be allowed to make a statement?

The CHAIRMAN: If you will reserve it until we get through with this inquiry.

Q. Don't you know that such a dividend as contemplated by that answer cannot be paid with the price of gas substantially reduced below its present increase?

A. No, sir.

Q. Seven per cent. on $39,000,000?

A. The companies have declared a dividend for a year, and they have earned it; that I believe to be the fact; I know that to be the fact as a director.

9019 Q. Don't you know if the price of gas for this year had been $1.50 a thousand, such a dividend could not have been earned—such a dividend as they have declared?

A. I believe, and I say under oath that they earned it.

Q. I ask you if the price of gas had been $1.50 a thousand whether such a dividend would have been earned?

A. I think it would; I have not made any figures about it.

Q. You mean that during the past year consumers of gas in the city of New York have paid to the Consolidated Company such a price as has enabled that company to make a dividend of seven per cent. upon an amount of stock increased upon the theory as already stated?

A. Well, sir, the question is a little confusing.

Q. You mean that during the past year the consumers of gas in the city of New York have paid to the Consolidated Company such a price as has enabled that company to make a dividend of seven per cent. upon an amount of stock increased upon the theory as already stated.

A. May I make an explanation after I answer the question? I want to have my answers clear and definite; I say, yes; I mean by that I think the gas company has made seven per cent. absolute profit upon its capital, and has earned it all.

Q. Do you remember during the progress of the proposition to consolidate that the values of the so-called franchises were apportioned to the various companies under a plan of this kind; I read from a proposed inchoate plan submitted among other papers by James W. Smith, the following paragraph:

"When all of the values are fixed and determined upon, the amounts thereof shall be aggregated and the difference between the total thereof and the amount of the capital of the new com-
9020 pany, as heretofore fixed, shall be deemed to be the value of the good-will and franchises of the several existing companies and shall be divided between them in proportion to their individual sales of gas as adjusted and confirmed by the present committee of one of each company, to the gross amount of sales by all the companies so adjusted for the period from October 15, 1882, to October 14, 1883, and the sum thus divided shall be added to the schedule value of each of the existing companies, and shall together form the capital of the new company."

Do you not remember the fact to be that the values of the so-called rights, franchises, etc., were apportioned upon that basis?

A. I don't know but that is so, but I don't remember any more than what you read there.

Q. You don't remember that they were apportioned upon any other basis?

A. I have given what was stated here, the argument used in regard to the franchises.

Q. The element of stock was of course considered in addition to what I have just read?

A. The gas which they distributed would show the value of their

capital; if one company that year distributed twice as much gas as another, of course its stock would be worth a great deal more.

Q. Referring to the act which was drafted in 1883, and passed in 1884, who had charge of the necessary expenses attendant upon the introduction and passage of that in the Legislature?

A. The necessary expenses there you mean, at Albany?

Q. Anywhere in that connection?

A. I didn't pay any expense to anybody; I gave it to Senator Jacobs and asked him to present it.

Q. Who did in behalf of the company?

9021 A. That I don't know anything about. I asked Senator Jacobs to take charge of the thing, and he said he would do it.

(By Senator MURPHY:)

Q. Was the bill introduced in the Senate or the Assembly?

A. In the Senate by Senator Jacobs.

Q. It was not moved?

A. I don't know.

Q. Was the bill which was introduced in the Assembly passed first or was the Senate bill moved after it was introduced?

A. I don't know; I asked him to take the bill and push it along as fast as he could, and he introduced the bill.

Q. Who represented the pooling committee or consolidation interests in expenses attendant upon the inception of that act in the Legislature?

A. I don't know any thing about any such expense in the pooling committee.

Q. Did any body attend in the interest of that act before the Legislature?

A. I don't know that they did; I gave the bill to Senator Jacobs and asked him to do all that was necessary to push the bill through.

Q. Do you know anybody in the city of New York who was interested in the passage of that act, or who took any interest in aiding its passage?

A. No, sir.

Q. Did you ever hear any name mentioned?

A. No, sir.

Q. Did you ever hear the name of O'Brien mentioned in that connection?

A. No, sir; I never heard his name mentioned.

Q. Was the matter of the passage of that act ever considered before the pooling committee?

A. No, sir; not to my knowledge.

Q. Have you any knowledge who introduced that bill in the Assembly?

A. No, sir; if you are asking for any arrangement at Albany, or money paid, now I don't know any thing of the kind.

9022 (By the CHAIRMAN:)

Q. If that was done, it was not done with your knowledge?

A. No, sir; I don't know any thing about it.

R. F. CUTTING, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You was at one time interested in the bonds of the Knickerbocker Gas-light Company?

A. Yes, sir.

Q. You are still a holder of some of those bonds?

A. Yes, sir.

Q. When did you first become interested in those bonds?

A. As far as my memory serves me I commenced to be interested in the fall of 1878 or the beginning of 1879; I can't answer with certainty without referring to papers.

Q. Had you any interest directly or indirectly before that time?

A. No, sir.

Q. How did you begin then to be interested?

A. Through taking an interest in the formation of the company to be called the Knickerbocker Gas-light Company.

Q. What interest did you acquire in that company?

A. In the shape of bonds and stocks.

Q. Yourself, and who was associated with you in acquiring that interest?

A. I was acting at the time as the representative of an estate.

Q. What estate was that?

A. On the part of my grandmother's estate; I was one of the executors.

Q. What estate?

A. Elizabeth Bayard.

Q. Did the Knickerbocker Company buy property of the estate of Elizabeth Bayard?

A. No, sir.

9023 Q. What was the relation of Elizabeth Bayard to the Knickerbocker Company in 1878 or 1879?

A. Simply that her estate provided the funds for the inauguration of the company; I was one of her representatives, and my brother, William B. Cutting, and my cousin, M. B. Brown.

Q. You three were associated as a unit in that transaction?

A. Yes, sir.

Q. What was that transaction?

A. The first transaction was the purchase of certain properties that had been the property of the Union Gas-light Company.

Q. Whom was that contract of purchase made with?

A. With the representatives of the Union Gas-light Company, assignees.

(By the CHAIRMAN:)

Q. The receiver?

A. Receiver.

Q. What is his name?

A. There were three, if I recollect right—one was Appleby; one was Redfield, or a name similar to that; I could not answer exactly the names.

Q. Charles B. Appleby?
A. I believe that is the gentleman.
Q. Did you buy it at a public or private sale?
A. A private sale.
Q. What did you buy?
A. We bought the property comprising land in Ninety-eighth and Ninety-ninth street, First to Second avenue; and such property as remained between First avenue and the water line of the Harlem river; and also between Ninety-eighth and Ninety-ninth streets.
Q. What was the total cash paid for that property?
A. I don't remember, sir.
Q. To whom was it paid?
A. To the receivers, if I remember right.
Q. Who made the payment?
A. William A. Stephens, trustee for certain persons interested in the purchase of that property.
9024 Q. Who were the persons besides those you have named?
A. Pierrepont Morgan, I think, had a small interest; William A. Stephens and John Sickles.
Q. Stephens was acting under a trust?
A. Yes, sir; I think so.
Q. Who has that writing?
A. I don't know.
Q. Have you a copy?
A. I am not certain; I am not even sure that he was acting under an instrument in writing, but I presume he was.
Q. The person for whom he was acting contributed to him the funds from which he made the payments?
A. Yes, sir.
Q. As the result of that transaction was all the money paid at once or were there securities given for a part of the property purchased?
A. I don't remember definitely.
Q. Give your best recollection as to the amount paid in that purchase?
A. My impression is—it might be very far from correct.

The CHAIRMAN: It is subject, of course, to correction.

Q. You may give your best recollection, and if in error, you may correct it?
A. My recollection is that the sum paid was $2,000, but my impression is very vague indeed; I remember well, it was a sum supposed to be comparatively insignificant to the value of the property at the time.
Q. Do you know to whom the title was taken?
A. Well, I don't remember whether in the name of William A. Stephens, trustee, or to the Knickerbocker Gas-light Company; I presume to the Knickerbocker Gas-light Company.
Q. At that time were there any constructions upon that property?
A. Yes, sir; there were several large buildings; a retort house, and another very large structure needed on the property; beside the docks, and also two gas-holders.

9025 Q. Were they then being used for producing gas?
A. No, sir; I don't think they had ever been used.
Q. Were there any mains that had been laid then, and which were included in the purchase?
A. Practically I think none; I think the Union Gas-light Company had laid a few feet of mains.
Q. Did this purchase include the stock of the Union Company as well as the property?
A. It included the franchise—well, it must have included the stock.
Q. Was the Knickerbocker Company then organized?
A. Yes, sir.
Q. Who were its officers?
A. Mr. Stephens, John Sickles, myself and Mr. Brown; I was a director.
Q. Who were the other directors?
A. Stephens, Sickles and Brown.
Q. Who else?
A. Mr. Howes; he had a small interest in the company also; I had forgotten him entirely.
Q. When you bought this property of the Union Gas-light Company it was free and clear?
A. Yes, sir.
Q. What did you do with the property when you bought it?
A. The Union immediately put in the machinery for gas making and to lay mains.
Q. At the time of this purchase how much capital stock of the amount of the Knickerbocker Gas-light Company—what was its capital prior to the purchase?
A. The capital stock was $1,500,000; I don't remember that any of it had been actually issued.
Q. Now after this purchase—did the Knickerbocker Company make a mortgage on those premises?
A. Yes, sir.
Q. And issued bonds.
A. Yes, sir.
9026 Q. And did they also issue all that capital stock, $1,500,000?
A. Yes, sir.
Q. That was done?
A. To the best of my recollection.
Q. It was done while you was a director?
A. Yes, sir.
Q. And prior to 1879?
A. I couldn't say; I don't remember when the operation was commenced; it might have been in 1879; it was done, however, immediately after the first operation.
Q. To whom was that stock issued?
A. I think it was all issued in the name of William A. Stephens as trustee.
Q. Except enough to qualify the directors, of course, was there not?
A. Yes, sir.

Q. To whom were the bonds issued?

A. William A. Stephens, trustee.

Q. Up to the time that these bonds and that stock had been issued the estate of Elizabeth Bayard, through yourself as its representative, and being associated with the other parties in interest, had advanced the sum of $282,000?

A. I think so.

Q. Prior to 1880 how much money in all had been advanced by William A. Stephens, trustee, for yourself and associates?

A. I couldn't answer that without refreshing my memory as to what the circumstances were.

Q. I think we will take your best recollection up to the 1st of January, 1880.

A. Money was being advanced by Mr. Stephens to the company the whole time, as the mains were being laid, and every month, of course, adds to the total.

Q. Do you know what the total was up to January, 1880?

A. I couldn't tell you how much of the whole amount was advanced up to that time.

Q. When advanced after that?

9027 A. There were advances made up to the time the Knickerbocker sold to the Municipal.

Q. The amount?

A. Something over $1,200,000.

Q. How much of that was advanced through you, either from the estate of Elizabeth Bayard through you or otherwise?

A. It is a matter of private business which I do not wish to have ventilated unless it is absolutely necessary.

Q. Here is a company that has been capitalized and upon which the public are being charged the price of gas to pay a dividend upon a capital of three millions of dollars; so far as the committee has been able to ascertain, there are no books to show except the customers' ledger.

A. William A. Stephens up to that time used for the purpose of the Knickerbocker Gas-light Company something over $1,200,000.

Q. Inasmuch as the stock has been distributed to the parties now holding it, if you will indicate whether there are any book or books of the Knickerbocker Gas-light Company that will throw any light upon this transaction it would aid us very much; how long did you continue to hold any interest in that company?

A. Until the sale of the company to the Municipal Gas-light Company.

Q. Then what did you receive, bonds?

A. Yes, sir.

Q. And stock of the Municipal Company?

A. Yes, sir.

Q. And you have transferred that stock into the stock of the Consolidated Company?

A. Yes, sir.

Q. And you and your associates hold more or less of that stock to-day?

A. I don't hold a single share.

Q. You did at the time of the consolidation?

A. Yes, sir.

9028 Q. You also hold these bonds which have been assumed by the Consolidated?

A. Yes, sir.

Q. You are aware that the stock has been reserved to take them up or pay them?

A. No, sir, I am not aware of it.

Q. Those bonds are secured by a mortgage?

A. Yes, sir.

Q. Who is the trustee of the mortgage?

A. I believe I am one, but I am not certain about it.

Q. How much of this money, $1,300,000, was in fact advanced by the estate of Elizabeth Bayard, or by yourself?

A. I can only answer as far as my recollection goes; well, I should say about—do I understand that the committee want that information?

The CHAIRMAN: It seem- to be possible that it will supply a link which we shall need.

A As far as I can remember, I should say it was about $1,150,000, or a little over that.

Q. Of the $1,200,000 advanced?

A. I may be entirely in error; it is a good many years, and I have discharged it from my mind altogether.

Q. Were there not two sets of bonds issued?

A. Yes, sir.

Q. The first set?

A. Seven hundred and fifty thousand dollars.

Q. When were those issued?

A. I should say in 1878.

Q. To your best recollection they were issued in 1878?

A. I should think so.

Q. The other block of bonds were how much?

A. Four hundred and fifty thousand dollars.

Q. To your best recollection they were issued when?

A. About 1879.

Q. About the time of the improvements made by Mr. Rowland on the works?

A. I think not.

9029 Q. They were issued about the time those improvements were made on those works?

A. They were issued for money that had been actually expended by William A. Stephens.

Q. On the works?

A. Yes, sir; we never knew Rowland at all; any thing that he did was an additional expense over and above that $450,000.

Q. When the first issue of $250,000 was made of bonds were they all given to you personally?

A. If I remember, I said I was one of the trustees; I think my brother was trustee of the mortgage, and I think the bonds were all placed in his hands—$750,000.

Q. How much stock was placed in his hands at that time?

A. I don't know.

Q. How much stock did that transaction contemplate should be issued at the time?

A. I don't remember.

Q. When the $450,000 issue of the bonds was made, who received those bonds—the same gentlemen?

A. Yes, sir.

Q. How much stock was then issued to them.

A. I don't remember.

Q. What stock was it that they then received—Knickerbocker stock, was it not?

A. Yes, sir.

Q. Do those two issues exhaust all the shares of the Knickerbocker capital?

A. If I remember rightly, yes; some shares went other ways.

Q. How many?

A. The promoters of the company received certain stock; I refer to Messrs. Stevens and Sickles; I don't remember the total number of shares thus apportioned.

Q. Is there any book or books that will give us that information?

A. I think not.

Q. Is there any member of the board of direction that would be likely to have any more knowledge on that subject?

A. Mr. Stephens should have a better knowledge of that transaction than I have recollection of.

9030 Q. Well, it was less than $300,000 par value?

A. Yes, I should say it was.

Q. How much less?

A. My impression is that it was about 1,500 shares.

Q. Representing $150,000 at par?

A. Yes, sir.

Q. And all the balance of the stock was issued to the parties who took the bonds?

A. Yes, sir.

Q. You continued to hold that stock until the Municipal Company acquired it?

A. Yes, sir.

Q. You remember a transaction in March, 1880, do you not, when the Municipal Company bought all that stock?

A. Yes, sir.

Q. You gave a guarantee that the indebtedness should not exceed $200,000, did you not?

A. Yes, sir.

Q. How much money was paid in closing that transaction?

A. I don't remember.

Q. Were you present when the transaction was closed?

A. I don't think I was; there was quite a number of meetings held about that time, but I don't remember being present at the final transaction.

Q. Do you remember being present at an occasion when Mr. Day was present at the close of that transaction?

A. I remember of meeting Mr. Day several times; I don't recollect any special occasion, though.

Q. You remember a payment of $50,000 that was made about that time?

A. I do not remember distinctly.

Q. What is your best recollection about that circumstance?

A. My recollection is so exceedingly vague upon the matter, I can't give it.

Q. Do you remember a payment of about $350,000 about that time?

A. I don't remember with any distinctness.

9031 Q. What is your best recollection about that circumstance?

A. There was a cash payment made; my recollection of the final transaction fails me a good deal.

Q. Give your best recollection about it?

A. I really can't give any thing definite what the features of that final transaction were.

Q. How much stock of the Municipal Company, if any, was passed over in closing that transaction?

A. I don't remember.

Q. Do you remember the fact, that some was passed?

A. Yes, sir.

Q. How much did you get of that Municipal stock, as a result of that transaction?

A. As a representative of the estate of Mrs. Bayard?

Q. In any shape.

A. If I remember rightly we received 3,550 shares; I may be incorrect there too.

Q. Was that for the estate of Elizabeth Bayard, or for the associates with yourself and William Bayard Cutting?

A. For the estate alone.

Q. How much did you get for yourself?

A. None.

Q. How much did William Bayard Cutting get?

A. No stock at all.

Q. Do you mean that in this whole transaction that neither yourself nor William Bayard Cutting had any personal interest whatever, either in cash, stock or bonds?

A. None whatever.

Q. And at no time receiving any?

A. No, sir.

Q. Yourself nor your brother?

A. No, sir.

Q. The transaction was entirely a transaction of that estate?

A. Yes, sir.

Q. The accounts of the estate will show, will they not, the amount of stock received?

A. They kept no ledger, and I don't know that there are any figures whatsoever.

Q. You was an executor?

A. Yes, sir, and William Bayard Cutting.

9032 Q. Will not the account of the estate show the number of shares of the Municipal stock that the estate acquired by reason of this transaction?

A. I could not answer that.

Q. Was you an attorney in this transaction?

A. Yes, sir.

Q. Having a power of attorney?

A. She was alive at that time.

Q. Did she give you power of attorney?

A. Yes, sir.

Q. Is it your best recollection of that transaction when the property was passed to the Municipal Company that you retained your bonds and parted with all your Knickerbocker stock, and received Municipal stock to the extent of three thousand five hundred and fifty shares?

A. Yes, sir.

Q. Now where did the $350,000 payment come in—who received that?

A. I don't know, sir; I don't remember what the circumstances of that payment were.

Q. Do you remember the fact that a suit was brought for damages, so called, by the Knickerbocker against the Municipal Company in 1879?

A. Yes, sir.

Q. Did you have anything to do with instituting that suit?

A. If I remember rightly; yes, sir.

Q. Do you know that that suit was settled at the time of this transaction or sale?

A. Yes, sir.

Q. And you think there was a payment of $50,000 made in cash at that time?

A. I did not say that I thought so; I don't remember.

Q. As an officer of the Knickerbocker Company at that time have you no information whatever as to the disposition made by the Knickerbocker Company of the sum of $300,000 or $350,-

9033 000, which it appears in evidence here was paid by the Municipal Company to the Knickerbocker Company at the time this transaction was closed?

A. I don't remember the disposition of that.

Q. Did Elizabeth Bayard, or her estate, receive any part of that $350,000?

A. I don't remember.

Q. Has any money whatever been advanced by or through you to the Knickerbocker Company in excess of the amount, and still remaining unpaid to you in excess of the amount of bonds which you now hold?

A. Yes, sir.

Q. How much?

A. I don't remember the actual figures.

Q. Has it all been repaid with the exception of the bonds which you now hold?

A. No, sir.

Q. Give your best recollection of what sum remains unpaid or unreturned?

A. My best recollection will not carry me with any certainty; there was a considerable sum expended—over $1,200,000.

Q. And advanced by the estate of Elizabeth Bayard?

A. Yes, sir.

Q. Give your best recollection of how much?

A. My recollection is exceeding vague; perhaps between $30,000 and $40,000.

Q. You continued to hold that block of 3,550 shares of the Municipal Company's stock until the consolidation?

A. Yes, sir.

Q. How soon after the consolidation did you dispose of the stock?

A. I don't remember how soon after; some time after.

Q. Has the trust of William A. Stephens for himself and his associates in the transaction you have just described ever been closed by any accounting or agreement?

A. I think so, yes, sir.

Q. When did that occur?

A. I don't remember the date.

9034 Q. What year?

A. About the time of the sale of the Knickerbocker to the Municipal, or soon thereafter.

Q. Is there any thing in writing on that subject in your custody or possession?

A. Not that I know of.

Q. Why do you say that it was closed by any accounting or agreement?

A. I take it for granted in a matter of that kind it would have been closed as a business transaction, and perhaps no recollection of it.

Q. How could it have been closed without the distribution of securities or moneys that were received by Stephens or his associates for distribution at the time of the closing of that transaction?

A. It probably was not closed until after that.

Q. Have you any recollection whatever of any subsequent accounting or agreement, by which such trust was closed?

A. I don't remember, sir.

Q. When did Elizabeth Bayard die?

A. In 1882.

Q. Did you continue to act under her power of attorney up to that time?

A. Yes, sir.

Q. Did you do any thing toward having that trust closed up before her death?

A. I don't remember, sir.

Q. State your best recollection what, if any thing, you did do from February, 1880, up to her death, in respect to any of these securities for this indebtedness?

A. The question is rather indistinct.

Q. State what, if any thing, you did do under that power of attorney, between February, 1880, and up to her death in 1882, respecting these securities for indebtedness?

A. What indebtedness do you refer to there?

9035 Q. It is clear you held certain bonds which you say did represent an indebtedness, and the question is intended to refer to any securities you have mentioned relating to that transaction?

A. The securities were held in absolutely the same way they were received.

Q. State what, if any thing, you did do under that power of attorney between February, 1880, and up to her death in 1882, respecting those securities for that indebtedness, what you did?

A. Nothing.

By the CHAIRMAN: The counsel refers to the indebtedness—the bonds of the Knickerbocker Company.

A. They were simply held in the estate of Mrs. Bayard?

(By Senator ROBINSON:)

Q. That you held them; the bonds?

A. Simply as representative of Mrs. Bayard's estate.

Q. You held them up to her death?

A. Yes, sir.

Q. Did you hold the Municipal stock?

A. The stock was all held.

Q. Did you take the shares as her attorney?

A. Yes, sir.

Q. Did you hold them as her attorney up to the time of her death?

A. Yes, sir.

Q. You had the certificates?

A. Yes, sir; every one of them.

Q. Did you have any money received from this transaction up to the time of her death?

A. It passed into the bank balance of the estate.

Q. Did you keep that account as her attorney?

A. Yes, sir.

Q. In what bank did you pass that money?

A. The American Exchange Bank.

9036 Q. Can you refresh your recollection from your bank account and tell the Committee how much cash passed to the credit of the estate of Elizabeth Bayard when this transaction was closed in 1880?

A. Yes, sir.

Q. Will you please do so?

A. Certainly.

Q. After 1882 after her death, did you continue to hold these bonds and this stock—you held it personally?

A. Yes, sir.

Q. You have got the bonds yet?

A. Yes, sir.

Q. You continued to hold the Municipal shares until you exchanged them?
A. Yes, sir.
Q. And then you sold them?
A. Yes, sir.
Q. Do you hold any relation to that estate now?
A. As an heir.
Q. Who is the executor?
A. W. B. Cutting.
Q. Anybody else?
A. No, sir.

The Committee hereupon adjourned to Tuesday morning, December 1st, at 11 o'clock.

FIFTH AVENUE HOTEL,
NEW YORK CITY, *December* 1, 1885.

The Committee met pursuant to adjournment.
Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.
H. E. Tremain, Esq., appears as counsel to the Committee.

JOHN C. JACOBS, a witness called by the counsel to the Committee, being duly sworn, testified as follows:

Examined by the CHAIRMAN:

Q. I believe you wish to make a correction as to what Mr. Day testified to?
A. Yes, sir; I wish to submit some correspondence I have had with Mr. Day, upon the subject of the evidence which he gave here Saturday last, I think; I addressed Mr. Day the following letter:

9037 BROOKLYN, *November* 30, 1885.

Henry Day, Esq.:

DEAR SIR: I see in the newspaper of Sunday, a statement made by you before the Senate Committee on the gas business, that you delivered the proposed consolidation act to me as a Senator, and asked me to introduce it in the Senate, and it is assumed I did not introduce it. I presume you did not intend to do me an injustice.

The facts are, that you came to Albany, and left me a bill, and asked me to introduce it after I had examined it. I made no promise about introducing the bill, but after keeping it a few days and examining it carefully, I returned it to you with a letter stating my reasons for not introducing it, which I did not do, as the record will show.

I ask, if upon reflection you find my statement to be true, that you will kindly give me a letter to that effect which I may be allowed to use.

Yours truly, JOHN C. JACOBS.

Q. Did you send that letter to Mr. Day?
A. Yes, sir.
Q. Did you receive a reply from him?
A. Yes, sir; the following is his reply:

120 BROADWAY, N. Y., *November* 30 1885.

Hon. John C. Jacobs:

DEAR SIR: I have your letter of the 30th inst. On reflection, I believe you are right in your statement that you returned the bill to my office, which I had left with you, and declined to introduce it. This fact had entirely escaped my memory when before the Committee, or I should have so stated it.

Yours very truly, HENRY DAY.

Q. When was that letter received?
A. Yesterday afternoon.
9038 Q. Are these originals, or copies.
A. This is Day's letter, the original; mine is a copy.
Q. You will put in evidence a copy of your letter, which you say is a true copy, and this which you say is the original?
A. Yes, sir.
Q. You was a member of the Senate in 1884?
A. Yes, sir.
Q. Did you know or hear of the passage of any bill, or the presentation of any bill in the Senate which you at the time understood to provide for the consolidation of the gas companies of the city of New York, or any bill having any relation whatever to that matter?
A. No, sir.
Q. Did you know of the passage of any such law except as you have heard it talked about since, and out of the Senate?
A. No, sir; that is all.
Q. You have been a member of both branches of the Legislature for a good many years?
A. Yes, sir; nineteen years, I think.
Q. It was a matter of surprise to you when you learned that there had been any bill passed, looking toward consolidation of the gas companies of the city of New York?
A. Yes, sir; it was.

(Senator MURPHY:)

Q. In the amendment of general laws it is almost impossible to discover what the object is except you are told, or except by the most expert lawyer and legislator?
A. Yes, sir; and then the most expert lawyer cannot discover the meaning of some legislation in the amending of general laws.
Q. To your mind such amendments are much more dangerous to the public than special legislation?
A. I regard it much more so than special legislation; in special legislation one knows what he is introducing; but in other matters one must take the word of the person who requests the amendment.

9039 Q. And the attention of the locality affected by it is not called to the subject-matter of the proposed amendment?

A. Never.

Q. In your letter which you have put in evidence you state that you examined the bill which Mr. Day put into your hands and found objections thereto, and for that reason returned it to Mr. Day?

A. Yes, sir.

Q. What was that bill?

A. I could not tell you; I could not tell you the title, but my impression is it was an act authorizing the consildation of corporations or manufacturing corporations, I could not tell; it was something of that general title.

(By Senator MURPHY:)

Q. To amend the general law of 1848.

A. I couldn't tell, I paid very little attention to it, I saw there were objections to it and returned it.

Q. Do you now recollect what your objections were to it?

A. I don't; they were stated in this letter to Mr. Day; the letter will show if I can find it.

Q. Did you see Mr. Day at Albany in relation to the matter?

A. Yes, sir; he called on me at my house in Albany; I kept house there that year.

Q. Did he tell you what the object of the bill was?

A. I think not.

Q. Or the interest he had in it?

A. I cannot recollect well enough to state; it is a matter I did not charge my mind with; I think he said it was a bill which was of importance to him and some of his friends.

Q. Do you remember whether he told you in what way it was important?

A. No, sir; I asked him to leave the bill and I would look into it and let him know what I would do about it; I looked into it and found objections and returned the bill.

9040 Q. Did any one else besides Mr. Day talk with you about the bill or the object of its passage?

A. No, sir; that was the first and last I heard of the matter; Mr. Day didn't even answer my letter to him; it didn't require an answer, perhaps.

Q. Do you know who did introduce the bill?

A. I don't.

Q. Do you remember any thing about its consideration in the Senate?

A. No, sir.

Q. Do you know what committee it was referred to?

A. No, sir.

Q. Have you any recollection with reference to the history of the bill in the Senate?

A. None whatever; I don't know what it was or how I voted upon the bill.

Q. Did you retain a copy of your letter to Mr. Day at the time you returned the bill?

A. No, sir; because I am not in the habit of doing so.

Q. Have you any memoranda by which you can refresh your recollection as to when this bill was handed to you?

A. It is possible I may have something among my papers.

Q. What is your recollection?

A. I think it was early in the session; it was not as late as the middle of the session.

Senator MURPHY: The better way to get at the time this bill was introduced would be to get the number of acts that were introduced amending the general manufacturing law; it is just as the Senator has testified; it would be almost impossible to tell whose act it was; they don't amend the title of the general manufacturing act, only a section of the general law to apply to the legislation they are seeking for.

The WITNESS: If that bill was intended to be the gas bill it never was introduced in the Senate; there was no bill like the one
9041 sent to me introduced and passed afterward, for the reason I think it may be an amendment to the general law.

Senator ROBINSON: Mr. Day testified that nearly every section of the bill which he put in was amended.

Q. When was this bill offered to you?

A. It is pretty safe to say, within six weeks after the organization of the Legislature.

Q. You retained it how long?

A. Not over a week; my clerk took it to Mr. Day and delivered it to him in person.

Q. It being the bill to provide for the consolidation of companies you would hardly be able to state that the same bill was not introduced and referred to a committee?

A. There is no bill which I can find that would contain such provisions.

Q. Have you examined chapter 367 with a view to compare it?

A. No, sir; I don't know what it is.

Q. It may be the same bill under a modified form?

A. It may be.

CHARLES G. FRANCKLYN, being recalled, testifies as follows:

Examined by Mr. TREMAIN:

Q. The expert reports that he has not been able to find or to receive from any official of the Municipal or Knickerbocker Companies any of the books except the customers' ledger; state to the committee where those books, including the stock book, are?

A. I don't know.

Q. When did you last see them?

A. I have no doubt they are in the office or somewhere about; I have not seen them for years, they are either in the Consolidated office or the branch office.

Q. Will you deliver them to this committee?

9042 A. They are not in my possession; they can be had, there is no doubt about that.

Q. Do you mean to say that the books of the Knickerbocker can be had?

A. You have had all there are, I believe; the customers' books, there are no other.

Q. When did you last see the stock of books of the Municipal?

A. I can't remember.

Q. You are president of that company and you are a director in the Consolidated?

A. I am.

Q. Will you deliver or cause to be delivered to this committee all the stock books of the Municipal Company?

A. I will do my best.

Q. Why has it not been done before?

A. It never was asked for; I have been asked to produce Knickerbocker books, and they do not exist; I cannot make books for the Committee.

Q. The inquiry has reference now to the Municipal stock books?

A. I presume they are in existence.

The CHAIRMAN: The answer about the Knickerbocker books the stenographer will strike out, because it was not relative to our inquiry.

Q. Can you send a messenger and have those books brought here now, and your examination will be suspended for that purpose?

A. I don't know where they are; I can send a messenger to two or three places and find out.

Q. We want the stock books of the Municipal Company?

A. I don't know of any except the certificate book.

Q. And the transfer book?

A. The transfer book.

Q. There was a stock certificate book?

A. I suppose so.

Q. Don't you know?

A. I suppose there are.

Q. Was there a stock transfer book?

A. I presume so.

9043 Q. Don't you know?

A. I don't know that I ever saw it.

Q. Who kept it?

A. Mr. Allen, the secretary.

Q. How many of those books were there?

A. I don't know.

Q. You know there were some, don't you?

A. Yes, sir.

Q. Was there a stock ledger?

A. Yes, sir.

Q. How many were there?

A. It seems to me you have all those books; you have had the stock ledger?

Q. The question is, was there a stock ledger?

A. Yes, sir.

Q. Where is that now, at the Consolidated office?

A. I don't know.

Q. Will you send for that?

A. If the committee so order.

Q. Do you remember preparing or having prepared under your direction at the time of consolidation, or shortly afterwards, a schedule of the cash assets of the Municipal Company?

A. I don't recollect.

Q. What were the cash assets of the Municipal that were turned over to the Consolidated Company?

A. I don't remember; the books will show, I presume; when they were turned over there was a memorandum of some sort; I don't remember what they were.

Q. Was there a memorandum of some sort given to the treasurer of the Consolidated at that time?

A. I really don't know; I presume there was.

Q. Didn't you sign such a memorandum as president of the Municipal?

A. I may have; I don't recollect that.

Q. Did you receive the money for them?

A. As president?

9044 Q. As anybody?

A. I don't remember whether I did or not.

Q. Did you receive stock for the cash assets?

A. Well, no; I think not.

Q. What did you do with the money you received?

A. Distributed it among the stockholders.

Q. What books of account will show it?

A. I think the Municipal dividend books will show it.

Q. Will that show the total amount received from the Consolidated for the cash assets?

A. I think so.

Q. What is your best recollection of that amount?

A. Some six hundred thousand dollars; I don't recollect exactly.

Q. When was that payment made by the Consolidated to you?

A. It was not made to me; it was made to the company.

Q. When?

A. Some time in January, I think.

Q. Were there any cash assets whatever in the Municipal beyond those that were paid for by the Consolidated?

A. I really don't remember whether the Consolidated ever had those or not.

Q. That don't answer the question?

A. I can't distinguish between those and any others.

Q. Were there any cash assets of the Municipal Company which the Consolidated Company didn't receive?

A. I don't know.

Q. Were there any cash assets of the company of which you are president that the Consolidated did not receive?

A. I don't know.

By the CHAIRMAN:

Q. You don't know whether or not the Municipal Company of which you are president turned over to the Consolidated Company all of their assets?

A. I don't remember.

Q. Have you any knowledge or recollection of any other disposition of any of the cash assets of the Municipal Company?

A. At what time?

9045 Q. At any time. I refer to assets which there were at the time of the consolidation, the then existing cash assets?

A. Yes, sir.

Q. Have you any knowledge or recollection of any other disposition of any of the cash assets of the Municipal Company existing at the time of the consolidation?

A. I am not sure about the time.

By the CHAIRMAN:

Q. What I suppose Mr. Tremain wants to find out is, the sum of $50,000 which was paid to you personally were any of those assets?

A. I don't know what they came out of; there was $50,000 paid to me as salary for eight or nine years.

Q. Paid to you when?

A. About the time when the Municipal affairs were closed up.

Q. Before or after the date of consolidation?

A. I don't remember.

Q. Was not that payment between November 11, 1884, and February 1, 1885?

A. I should think it was, but I don't remember exactly.

(By the CHAIRMAN:)

Q. If so, out of what funds did it come?

A. Out of the assets of the Municipal Company.

Q. That had been turned over to the Consolidated Company?

A. I don't remember whether they were turned over or not.

Q. Whose check was it you received?

A. The check of the Municipal Company.

Q. Now, having thus refreshed your memory, the question is——

A. I object to the remark "Having refreshed my memory."

Q. I will take that back; are you able to refresh your recollection so as to answer now whether there were any assets of the Municipal Company that were not turned over to the Consolidated Company?

A. I stated already that I don't recollect whether any of

9046 them were turned over; there may have been and there may not.

Q. Do you mean to say you don't recollect whether or not any assets whatever belonging to the Municipal were turned over to the Consolidated?

A. I mean I don't recollect.

Q. Don't you remember, as a fact, that an agreement was signed by the Municipal, pursuant to which certain assets of the Municipal were transferred, or were to be transferred, to the Consolidated?

A. I remember of its being discussed, but whether it was done or not I don't know.

Q. You put your signature, did you not, to the articles of agreement that were filed on November 11?

A. I believe so.

Q. You are recorded as signing that agreement for the Municipal Gas-light Company of New York City "by Charles G. Francklyn, president;" you signed that paper, didn't you?

A. I presume so; my signature is there.

Q. Prior to that time had you turned over any assets whatever to any officer of the Consolidated Company?

A. I don't remember.

Q. After that time did you turn over any assets whatever to any officer of the Consolidated Company?

A. I don't remember.

Q. You received eight or nine thousand shares of the Consolidated stock, didn't you?

A. I did.

Q. Eight thousand eight hundred shares?

A. I don't remember the figures.

Q. What did you give for that stock when you received the Consolidated, what did you surrender?

A. Forty-two hundred shares of the Municipal stock.

Q. Any thing else?

A. Not that I know of.

Q. Did you pay any money for this Consolidated stock?

A. No, sir.

9047 Q. After you signed this agreement, November 11, did you receive any assets whatever of any kind or any money belonging to the Municipal Company?

A. Yes, sir; I received a dividend on my stock.

Q. You received this eight thousand eight hundred shares, when?

A. I don't remember whether it was in the fall or after; the check-book will show.

Q. Did you receive any other?

A. No, sir.

Q. Do we understand you to testify that you don't remember the Municipal Company's transferring any other assets whatever to the Consolidated Company; is that your testimony?

A. I don't remember whether they did or not.

Q. Then that is your testimony?

A. Yes.

Q. Did you retain assets out of the Municipal Company in your own hands?

A. No.

Q. Did you receive any consideration in the way of stock or money from the Municipal Company or from the Consolidated Company in any way connected with the assets of the Municipal, except the $50,000 which you have mentioned?

A. No.

Q. Did you not owe the Municipal Company large sums of money at or about the time of its consolidation?

A. Yes, I think I had a call loan with them; I forget the amount.

Q. More than one?

A. There might have been separate amounts; I don't remember.

Q. Were those loans paid off before the consolidation agreement?

A. I don't remember when they were paid, but they were paid.

Q. To the best of your recollection, what was the amount of those loans outstanding at the time of the consolidation agreement?
A. I should say between $80,000 and $100,000?
Q. No more than that?
A. I don't think so; there may have been more.
9048 Q. Did that sum cover all the loans then outstanding in which you had either directly or indirectly any interest?
A. Yes, sir.
Q. Did you pay those loans to the Consolidated?
A. I think I paid them to the Municipal, but I am not certain about it.
Q. When?
A. I can't remember.
Q. Were there any other loans at that time outstanding, besides yours, owing to the Municipal at or about the time of the consolidation?
A. I don't remember if there were any or not.
Q. Do you not remember that you paid all your loans after the consolidation?
A. I don't remember, no.
Q. What is your best recollection as to when you paid off your loans?
A. The books will show, I can't remember these dates.
Q. Do you not remember that you did not pay off your loans until after you had received your certificates of Consolidated stock?
A. I don't.
Q. Is that the fact?
A. I have already said I did not know the date I paid them; I said no three or four times to the same question practically.
Q. It is not merely as to when it was, but relative to the time of consolidation?
A. I don't remember.
Q. Don't you know you did not pay them until after you received your Consolidated stock?
A. I don't know.
Q. Do you not know as a fact that you did not pay them until after you signed the Consolidated agreement?
A. It was after that, I think.
Q. Do you not know that it was after you had received your Consolidated certificates and sold some of your stock?
A. I don't remember it; it may have been.
Q. Do you testify that your loans did not exceed $18,000
9049 or $20,000?
A. I said $80,000 to $100,000.
Q. I beg your pardon; do you testify they did not exceed $100,000?
A. No, I do not.
Q. Did you have more than one such loan at that time outstanding?
A. I don't remember in what way they were divided in the books.
Q. Did they all stand in your name?
A. Yes, sir.

Q. Were there not some in which you were interested that did not stand in the name of Charles G. Francklyn?
A. Not as I know of.
Q. Was there not one to the amount of $40,000 in addition to the sums which you have already mentioned?
A. There may have been.
Q. What is your best recollection?
A. I don't remember.
Q. Did you have any conversation with any officer of the Consolidated Company in respect to the payment of those loans?
A. Not to my recollection.
Q. To whom, if anybody, did you pay those loans?
A. I think I must have paid them to the Municipal Company.
Q. Paid them to yourself as president?
A. No, paid them to the Municipal Company.
Q. To what individual did you make any such payment?
A. I made it to the Municipal Gas-light Company.
Q. To what individual, if anybody, did you make any such payment?
A. I don't know.
Q. Did you pay it in currency?
A. No.
Q. Paid it by check?
A. Yes, sir.
Q. Have you got the check?
A. I don't know; I suppose so.
9050 Q. Will you produce that check or any other check by which you paid it or assumed to pay your loans, or any other loans in which you are interested, to the Municipal Company; have you any such checks?
A. I presume I have.
Q. What is your best recollection?
A. I don't usually keep any checks; I have the stubs of the check book.
Q. Do you not keep your checks when they are returned?
A. I do for a while.
Q. On what bank was that check drawn to pay any such loan?
A. The bank of New York, or the Chase National Bank.
Q. You had personal accounts in both banks during 1884 and 1885?
A. Yes, sir.
Q. Who had charge of the making of the loans by the Municipal Company in 1884?
A. Mr. Gawtry and Mr. Allen, generally.
Q. Did you not have any thing to do with them?
A. Very little except to borrow some money occasionally.
Q. At whose request was a loan of $250,000 made to the Central Trust Company by the Municipal?
A. It was a part of the assets deposited there.
Q. You kept an account there, did you?
A. We deposited that.

Q. The Municipal kept an account there?

A. They made a special deposit, and they had our assets a short time before distribution; we made a deposit with the Central Trust Company to get some interest on it.

Q. Was that money turned over to the Consolidated Company?

A. I don't remember.

Q. Who was authorized to sign checks on that fund thus deposited with the Central Trust Company?

A. Mr. Gawtry, Mr. Allen any myself.

Q. Could not that money be drawn out of the Trust Company without all three signatures?

A. Two of them.

9051 Q. Do you know what was done with the money which was deposited in the Central Trust Company?

A. I could not tell you the Central Trust Company's business.

Q. Did you sign any checks drawing it out?

A. I think not; I don't know; I think Mr. Gawtry signed them in my place.

Q. Where is the check-book—with the Central Trust Company?

A. I don't think we had a check-book; they issue deposit receipts and they are returned when the money is paid on them.

Q. For that fund there was a certificate of deposit issued?

A. Yes, sir.

Q. In whose name?

A. The name of the Municipal Company.

Q. Was it in fact checked against at all?

A. No.

Q. How many such certificates were there to represent that fund?

A. I don't remember whether it was one or two.

Q. You received those certificates of deposit?

A. They were put in the Safe Deposit Company.

Q. Are they there now?

A. No, sir; they were delivered to the Central Trust Company I presume when the deposit was drawn.

Q. Who was it paid to?

A. The Municipal Company.

Q. To you personally?

A. No.

Q. To whom?

A. I presume the check was drawn to the order of the Municipal Company.

Q. You mean the Central Trust Company's check was drawn to the order of the Municipal Company?

A. I presume so.

Q. Who received that check?

A. I presume Mr. Gawtry or Mr. Allen.

Q. What was done with it?

A. I suppose it was deposited in the bank; either the Chase

9052 or the First National Bank, to the credit of the Municipal Company.

Q. Did they have accounts in both banks?

A. Yes, sir; I think they had it at that time.
Q. And you had personal accounts in both banks besides?
A. No, sir.
Q. In which bank did you have an individual personal account?
A. The Chase Bank.
Q. In any other?
A. The Bank of New York.
Q. In any other bank did you have an individual account?
A. Not at that time, I don't think.
Q. In 1884 or 1885, we are asking?
A. I think not.
Q. Then you think that the check of the Central Trust Company for the payment of this loan was deposited in the Chase National Bank, to the credit of the Municipal Gas-light Company?
A. That is my belief.
Q. Who was authorized to and did draw any checks on the Chase National Bank against the deposits or credits of the Municipal Gas-light Company in February, 1885, if any one?
A. I presume the officers of the company; I don't remember of anything special.
Q. That is no answer at all, with all respect to the witness; if you don't know say so; here is a fund of $250,000; you are the president of the company; you say it was deposited in a bank where your company had credit; if anybody drew any check on that fund who did it?
A. If anybody did, it was done by either Mr. Gawtry, Mr. Allen, or myself.
Q. Did you personally sign any checks on the Chase National Bank for this deposit of $250,000, which, you say, it was made for?
A. I said I presumed it was made there; I don't know whether it was made there or not, and I don't remember of signing any checks myself.
9053 Q. Where are the return checks of the Municipal Company?
A. I don't know.
Q. Can you tell what became of that money—that fund of $250,000?
A. Yes, sir; it was divided among the stockholders.
Q. Your source of knowledge as to how that money was deposited?
A. I know the dividend of the Municipal Company was declared and paid to all the stockholders; that was a part of it.
Q. Is that the way you have any knowledge of what became of this particular $250,000?
A. Yes, sir.
Q. What was the total amount in money that you say was divided among the stockholders?
A. Six hundred thousand dollars and odd; I forget the exact amount.
Q. Was it all deposited in one bank?
A. I think it was.
Q. What bank?

A. The Chase National Bank.
Q. And when was that deposit made?
A. I can't tell you.
Q. During what period was it made?
A. I suppose between November and the time it was paid out; I don't remember that.
Q. It was paid be-ween November, 1884 and February, 1885, was it not?
A. I think so.
Q. To that extent the assets of the Municipal Company were not transferred to the Consolidated, were they?
A. I said before I did not recollect whether they were transferred or not; if they were transferred, they were transferred back again for the payment of the dividend.
Q. What book will show such distribution among the stockholders of this $600,000?
A. I think it was nearly $700,000 and something; there is a regular dividend book which I believe contains all the particulars.
9054 Q. What book or books will show the distribution of that $700,000 and odd?
A. The dividend book.
Q. Did the board of directors of the Municipal Company meet and direct that distribution?
A. They did—excuse me; I think the matter was left to a committee for final distribution.
Q. Who comprised the committee of the board of directors having charge of that distribution of $700,000?
A. Mr. Ottendorfer, Mr. Day, and I think Mr. Gawtry, and myself, and I don't know but there was another one; I forget exactly.
Q. Do you know where that dividend book now is?
A. I do not.
Q. When did you last see it?
A. At the time of the dividend.
Q. Was the dividend paid in checks?
A. Yes, sir.
Q. Where are the return checks?
A. I don't know.
Q. You got your check on your 400 shares?
A. Yes, sir.
Q. What did you do with it?
A. Deposited it in my bank.
Q. Did you sign any receipt for that other than the indorsement on the check?
A. I did.
Q. Did all the stockholders, when that $700,000 was distributed, sign receipts in the dividend book?
A. I think separate receipts.
Q. Those were filed in the office?
A. I presume so.
Q. Will you produce them?

A. Those are not in my possession; the secretary can produce them.

Q. That is Mr. Gawtry?

A. Mr. Allen.

Q. The secretary of the Consolidated?

A. Of the Municipal Company?

Q. What security, if any, did the Municipal Company
9055 have for their loan in which you were interested to the amount of between $80,000 and $100,000?

A. Various stocks and bonds; I don't remember exactly what.

Q. Name any of them?

A. I can't think of any at the moment.

Q. Was there any security except stock of the Municipal Company?

A. Yes, sir.

Q. What?

A. I don't know that there was any stock of the Municipal.

Q. Name any security?

A. I can't without my papers.

Q. What book or books of the Municipal will show the record of any such security?

A. I think they kept a small book showing all those things.

Q. Who kept it?

A. Mr. Gawtry or Mr. Young.

Q. Were there loans outstanding at that time to anybody else besides yourself, or in which you had any interest?

A. Yes, sir.

Q. To what amount?

A. I don't remember.

Q. What security was there for any such loans?

A. I should have to refer to papers before I could tell you.

Q. What papers?

A. Books in the office.

Q. You mean the record of loans which you have referred to as having been kept by Mr. Young?

A. Yes, sir.

Q. Did he keep a record of the securities which were collateral?

A. I presume so.

Q. Don't you know?

A. I don't know as I ever saw it.

Q. Don't you know who in your company kept the record of collaterals?

A. No.

Q. You have testified that there was about $700,000 of cash assets which, if they were transferred to the Consolidated Company by the Municipal, were, as you say, re-transferred and distributed;
9056 were there any other assets of any kind whatever of the Municipal Company that were transferred to the Consolidated Company?

A. I think not.

Q. Was there any material of any kind whatever belonging to

the Municipal Company that was transferred to the Consolidated Company?

A. Yes, sir; I think so.

Q. Do you not call that assets?

A. I suppose they are assets.

Q. Were there no customers' deposits that they turned over to the Consolidated Company?

A. I believe so.

Q. Do you call such an item assets?

A. Yes, sir.

Q. Were there any book accounts, being a balance due from customers to the Municipal, transferred to the Consolidated?

A. I believe there were.

Q. Do you call them assets?

A. Yes, sir.

Q. Were they not transferred?

A. Yes, sir, they were.

Q. What was the total amount, expressed either in kind or in dollars, of material that was transferred from the Municipal to the Consolidated after the agreement was signed?

A. I have said already it was somewhere in the neighborhood of $700,000 or more.

Q. That particular sum which you have mentioned will include, will it not, the material?

A. Yes, sir.

Q. How much more than $700,000 was that sum?

A. The figures are before you and they are not before me.

Q. No, they are not before me?

A. I don't recollect the exact sum.

Q. As much as $800,000?

A. I should think so.

9057 Q. And more than that?

A. No, I think not.

Q. Was not the stock issued for that?

A. Who by?

Q. By the Consolidated?

A. No, sir.

Q. You are sure about that?

A. Yes, not to my knowledge.

Q. How much of that was for material turned over?

A. I don't remember.

Q. What book or account of the Mu[illegible]pal books or papers will show that?

A. I don't know.

Q. Who represented the Municipal board on the price or prices for such material?

A. I think I had a hand in it.

Q. And who represented the Consolidated?

A. I think it was done by the adjusting committee, if I remember right.

Q. Was there a schedule of such material made up?

A. I believe so.
Q. Who has it?
A. I don't know.
Q. When did you last see it?
A. I don't remember when I last saw it.
Q. Will you please send for those books and have them brought here immediately that were indicated in the early part of the examination today, and we will suspend your examination until they shall be produced?
A. If you will state what they are.
Q. They are all the stock books of the Municipal, stock and transfer books, stock ledger and check books of the Municipal; if they are at the expert's disposal he will go there?
A. They are at his disposal there.

PHILIP ALLEN, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

9058 Examined by Mr. TREMAIN:

Q. You were the secretary of the Municipal Gas-light Company?
A. Yes, sir; I was.
Q. You have heard Mr. Francklyn's testimony about the books, have you not?
A. Yes, sir.
Q. Do you know of any collateral loan book?
A. No, sir.
Q. Did you ever see or hear of such a thing?
A. No.
Q. Is there any book or books of the Municipal Company that ever did exist that relate to loans?
A. No.
Q. Did you ever have anything to do with the making of the loans?
A. Yes, sir.
Q. What part did you have about it?
A. I occasionally went down town and received securities for loans.
Q. Where?
A. Down town.
Q. Where?
A. Wall street, and wherever it happened to be.
Q. Where?
A. It depended upon whom we were getting the loan from, to anybody's office where it happened to be.
Q. Did you get receipts?
A. No, sir, checks.
Q. Were not the securities written on the back of the envelope?
A. Yes, sir.
Q. What became of them?
A. They were deposited in the Safe Deposit Company in a box.
Q. What record did the company have that you had received those securities?

A. Practically none.
Q. What, if any, record did the company have from you?
A. Practically none.
Q. What do you mean?
A. If they asked me for them, I could give them; I never kept any memorandum further than was on the back.
Q. Still it was a customary thing for you to make loans upon collaterals?
A. Yes, sir.
9059 Q. Did you make a variety of such loans during the years 1882, 1883 and 1884?
A. Yes, sir.
Q. Were any loans made by anybody else except yourself?
A. Yes, sir.
Q. By whom?
A. Mr. Gawtry.
Q. Who else?
A. I can't recollect any one else, sir.
Q. When Mr. Gawtry made loans did he bring a record of the collaterals that were received to the office?
A. Not that I am aware of.
Q. Then these loans were made without any record of them?
A. Except the amounts and the rate of interest.
Q. In what book was the original entry made on that subject?
A. I don't know; I am not a bookkeeper.
Q. What were your duties in the office at that time?
A. Various; kept the minutes and signed the certificates of stock, and kept the stock books.
Q. Did you have charge of making all the deposits?
A. No, sir, I did not.
Q. Who did?
A. The office messenger took them down town.
Q. Who had charge of making them out?
A. They were made up by one of the cashiers.
Q. Who?
A. I could not tell you; I suppose one man sometimes, and sometimes another.
Q. Whose business was it to take charge of the bank account?
A. I could not say exactly who it was.
Q. Who took charge of the bank accounts—yourself?
A. I indorsed the checks sometimes—usually.
Q. When loans were paid off, did you indorse the checks?
A. Either Mr. Gawtry or myself.
Q. Did you go down town then and get the securities and deliver them?
A. Sometimes.
9060 Q. When you didn't, who did?
A. Mr. Gawtry.
Q. Anybody else?
A. No, sir.

Q. Do you remember what security there was for loans to Mr. Francklyn of about $80,000 or $100,000 in the year 1884?

A. I don't.

Q. Do you remember of any other occasion of a loan to Francklyn on collateral security?

A. Yes; he had loans on collateral securities.

Q. Do you remember of any securities?

A. No.

Q. Did you receive the securities in any instance from Mr. Francklyn?

A. Yes, sir.

Q. Did you deliver up any securities to Mr. Francklyn after the consolidation?

A. I don't know; I don't recollect whether I did; as to particular ones I received or delivered them to I could not tell you.

Q. Do you remember a loan to Mr. Francklyn of $40,000?

A. I remember there was one.

Q. Do you remember that it was paid off after the consolidation?

A. No, sir.

Q. Did you ever see any of the books of the Knickerbocker Company?

A. We kept them in the office, yes, sir.

Q. Did you ever see any books except the customers' ledger?

A. I have seen all the books.

Q. Did you ever see any books prior to 1880 of the Knickerbocker Company; any whatever?

A. No, sir; never.

Q. When did you last see the stock books of the Municipal Company—what stock books did you ever see of the Municipal Company?

A. Customers' ledger, stock transfer books, and book of certificates.

Q. Any others?

A. No, sir.

Q. When did you last see them?

A. The last time I ever looked at them was making them up, closing the books, before the consolidation, except I may
9061 have seen the backs of them as they were in the office.

Q. Are those books at the disposal of the experts now?

A. Certainly.

Q. Is there any difficulty about those books, or any books of the Municipal Company, being immediately examined by the expert and his assistants?

A. Not that I am aware of.

Q. Who else was employed in the office of the Municipal during the year 1884, the particular men?

A. Gawtry was the vice-president, I was the secretary, and Mr. Young was there.

Q. He was there attending to business all the while?

A. Yes, sir.

Q. Where does he live—Mr. Young?

A. In Brooklyn somewhere, but where I don't know.

Q. What is his business?
A. It was then bookkeeper.
Q. What is his business now?
A. He is employed by the Consolidated Gas Company.
Q. At what place?
A. I could not tell you.
Q. When did you last see him?
A. About ten days or a fortnight ago; somewhere about that time.
Q. You own Consolidated stock now?
A. No, sir; I do not.
Q. Are you a director?
A. No, sir.
Q. Are you employed in any way by the Consolidated Company?
A. Yes, sir; to take charge of the Twenty-sixth street office.

(By the CHAIRMAN:)

Q. Formerly known as what?
A. The Municipal—the old Municipal office.
Q. Mr. Young is employed in the same office, is he not?
A. No, sir.
Q. He is employed at No. 4 Irving place, in the general office?
A. I believe he is.
9062 Q. Don't you know the fact?
A. I believe he is.
Q. Have you seen him there at work?
A. Yes, sir.
Q. Have you been there in the office within a week?
A. I was there yesterday afternoon.
Q. He was not there?
A. I did not see him there.
Q. Do you remember that you are one of five trustees under the trust agreement, dated March, 1880?
A. Yes, sir; as to the date, I don't know.
Q. I refer to the trust of 14,995 shares of the Knickerbocker stock?
A. Yes, sir.
Q. Did you ever do any thing in respect to that trust further than by accepting it and signing a trust agreement?
A. Yes, sir.
Q. What was the first thing you did?
A. I don't quite understand you.
Q. Who is in charge of that station, at Twenty-sixth street?
A. The office?
Q. Yes, sir.
A. I am.
Q. You have all these books in your charge, the stock books of the Municipal and the check books?
A. They are in the office.
Q. Are they locked up?
A. Yes, sir.
Q. If you are in charge of those books and that office your examination will be suspended in order that you may go to that office with the expert so that they may be examined there?
A. Very well.

H. E. GAWTRY, a witness, recalled by the counsel to the Committee, testifies as follows:

Examined by Mr. TREMAIN:

Q. Do you remember about any loan book of the Municipal Company?

A. No, sir; there never was any such book.

Q. No record kept of collaterals?

A. Nothing except what was in the safe deposit vault or on the back of the envelope, if it was an envelope.

9063 Q. Anybody else except yourself and Mr. Allen have access to that vault?

A. No, sir.

Q. Were any receipts given for the collaterals before they were delivered up on payment of loans?

A. I think not.

Q. In 1880, when the Knickerbocker was purchased and the guarantee of indebtedness given did you personally make any inquiry or see any records pertaining to that indebtedness of $1,200,000 as alleged?

A. No, sir.

Q. You are cognizant of that transaction?

A. Of the purchase of the Knickerbocker Company, yes, sir; I believe there was a guarantee that the floating debts should not exceed $450,000.

Q. And what else?

A. That is the only guarantee that I know of.

Q. Did you ever make any inquiry concerning what that floating debt was?

A. No, sir.

Q. Did you ever make any inquiry concerning the $750,000 of additional indebtedness of the Knickerbocker Company at that time?

A. I was informed that there was a mortgage on the property; I think the lawyer gave me the information.

Q. Who gave you that information?

A. Henry Day.

Q. Anybody else?

A. No, sir.

Q. As an officer of the Municipal Company, purchasing property subject to that indebtedness, did you make any investigation whatever concerning the indebtedness either of the $450,000 or of the $750,000 at that time?

A. I don't think I was an officer of the Municipal Company at that time.

Q. What were you?

A. Manager of the company at that time.

Q. Did you make any inquiry whatever about that?

A. No, sir, I had nothing to do about it.

Q. Were you present when that transaction was closed?

A. No, sir.

9064 Q. Do you know who conducted that transaction for the Municipal Company?

A. I do not.
Q. Do you know where the stock came from that was given to Mr. Cutting?
A. I do not.
Q. Did you contribute any of your Municipal stock?
A. I did not.
Q. Was any schedule of that floating indebtedness of $450,000 ever presented to the Municipal Company?
A. I don't know.
Q. Did you ever see any list of that indebtedness?
A. No.
Q. Did you ever have any information directly or indirectly in respect to the amount of that indebtedness?
A. Nothing beyond the fact that the total indebtedness of the company was $1,200,000.
Q. Did you ever have any information of any schedule of that floating indebtedness?
A. Never heard of it.
Q. Did you ever hear of any inducement leading the Municipal Company to assume that indebtedness and keep the property subject to it?
A. No, sir.
Q. Do you know what the inducement was?
A. Never heard of any.
Q. Do you know about any loans that Mr. Francklyn charged to himself personally, or any which he was interested in in 1884, from the Municipal Company?
A. I do.
Q. You know the total amount of those loans in the summer of 1884?
A. If you will allow me to refresh my memory with papers—the Municipal books will show the records exactly.
Q. Except the collaterals?
A. I don't think they will show the collaterals.

(By the CHAIRMAN:)

Q. No record made and preserved in the office of the Municipal Company of any collateral securities in connection with
9065 loans made by the company?
A. I think there was a memorandum of this loan; I am not quite sure.
Q. Made and preserved in the company?
A. At the time the loan was paid, I think it was; I am not sure.
Q. Who kept it?
A. Probably in the safe.
Q. In a book?
A. No, sir, not to my recollection.
Q. Who kept that record?
A. I presume I did.
Q. Is it there now?
A. I could not tell you.

Q. You know the fact whether there exists or not any record of collaterals to loans that were outstanding in the summer of 1884.

A. I don't know; if there is such a record it is in the Twenty-sixth street office and it can easily be obtained.

Q. In what shape?

A. I don't know.

Q. Any memorandum?

A. Probably.

(By the CHAIRMAN:)

Q. Do you say there was no record of that made except memoranda?

A. That is my recollection.

Q. Did you destroy any such?

A. I probably did when the loans were paid off, as being of no value; I don't remember of having done so, however.

Q. Was that generally done when the loans were paid off?

A. Yes, sir.

Q. What books will show when Mr. Francklyn's loans that were outstanding at the time of the consolidation were paid?

A. The cash book.

Q. Do you remember when they were paid off?

A. I do not; as a matter of record that will show.

Q. Will the cash books show when other loans that were then outstanding were paid off?

A. Yes, sir.

Q. Will it show the sources of money by which they were paid?

A. Yes, sir.

9066 Q. What were the sources?

A. Francklyn's check.

Q. Any other?

A. From anybody else who had a loan.

Q. What was done with the money?

A. Deposited to the credit of the company.

Q. Where?

A. In either the Chase Bank or the First National Bank.

Q. Are either of those bank accounts that were in the name of the Municipal Company closed?

A. I think they are both open to-day.

Q. What was the amount of assets of the Municipal Company that were not turned over and retained by the Consolidated Company?

A. The gross amount of assets of the Municipal Company at the time it wound up was $800,000; that of course included any thing that was turned over in the shape of collections, or which the Consolidated Company paid the Municipal Company.

Q. How much did the Consolidated Company pay the Municipal Company?

A. If you will produce those papers of the adjusting committee that I left with you a few days ago——

Q. Refresh your recollection by looking at the schedules of materials and supplies on hand November 11, 1884, of the Municipal

Gas-light Company; how much in all did the Consolidated Company pay the Municipal for its assets after the consolidation agreement?

A. These papers—the amount don't seem to be in here; I could not tell you without reference to the books; it is a matter very easy to get at.

Q. Is this a proper answer; the Consolidated Company paid the Municipal Company in addition to its schedule values, the two sums mentioned there for materials and also the amount of book accounts?

A. Yes, sir.

9067 Q. Any thing else?

A. Nothing that I know of.

Q. And the two amounts which are shown by the schedule of materials and supplies are first, of the Municipal Company, $61,289.50; second, Knickerbocker Company, $45,711.35; we understand you to say, in addition to those two sums, the Consolidated Company paid the Municipal Company the amount of the outstanding customers' accounts?

A. The amount agreed upon.

Q. Was the amount agreed upon—the exact amount shown by the books?

A. No, sir; some allowances were made for bad debts.

Q. That is shown by the books?

A. Yes, sir.

Q. Any other items?

A. Not to my knowledge; there may have been some small accounts.

Q. That was paid not in stock but in cash?

A. I believe all in cash.

Q. Were there any other payments whatever made by the Consolidated Company to the Municipal?

A. No, sir.

Q. From what source was the payment of $50,000 made to Mr. Francklyn?

A. Out of cash belonging to the Municipal Company.

Q. After the consolidation?

A. I don't remember what date it was.

Q. Don't you remember whether it was after the consolidation was agreed upon?

A. I don't know; I could not tell you.

Q. It was after the schedule of values was made up?

A. I think probably about that time.

Q. That was turned over to the Consolidated Company and paid back?

A. No, sir; there was no cash turned over to the Consolidated Company by the Municipal Company.

Q. What was the last dividend paid to the stockholders of the Municipal Company in 1884?

A. I think it was in October, 1884.

9068 Q. Was it not fifteen per cent. on the stock?

A. Yes, sir.

Q. I ask prior to the consolidation?

A. Yes, sir, I think it was in October.

Q. Do you remember the total amount of dividend that went up to that time, during 1884?

A. I do not.

Q. The total percentage?

A. That is fifteen per cent. on the capital stock.

Q. Was that prior to the consolidation in 1884, to the best of your recollection, that the Municipal had paid fifteen per cent. dividend?

A. I presume so.

Q. What percentage has been distributed since that last dividend?

A. Twenty-six and a half per cent.

Q. And when was the distribution?

A. The latter part of February, 1885.

Q. That makes forty-one per cent. distributed during that year?

A. No, sir.

Q. During eleven or thirteen months?

A. I could not tell you what date in 1884 it was payable without referring to the papers.

Q. This dividend of twenty-six and a half per cent. which was paid to the stockholders of the Municipal was of course earned prior to the consolidation, November, 1884?

A. Yes, sir, it was the surplus that the company divided among the shareholders.

Q. That included the Knickerbocker assets, did it not?

A. Yes, sir.

Q. Are you a stockholder in the Consolidated Company now?

A. Yes, sir.

The CHAIRMAN: We will suspend your examination, Mr. Gawtry, until some future time, in order to enable the expert to make the examination.

9069 R. F. CUTTING, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. Have you brought any memorandum—original memorandum or books relating to the transaction of the purchase of the Knickerbocker stock by the Municipal Company?

A. I have the transcript of entry; I will correct my statement which I made the other day; I did not myself conduct the negotiation; it was conducted by W. B. Cutting, but I was cognizant of what was going on at the time; I said that the Knickerbocker received 3,500 shares of stock, in which I was practically correct; I had forgotten about the $350,000, which Mr. Day said had been paid to the Knickerbocker Company at that time; I didn't do the clerical work on the books; that is a transcript made by Mr. Brown from Mrs. Bayard's books.

Q. Who kept that book?

A. At the time M. B. Brown was keeping it.

Q. Did you make any memorandum in respect to that transaction at that time?

A. No, sir; none whatever.

Q. Didn't you receive a deposit of some money?
A. No, sir.
Q. Prior to that time hadn't you personally made payments?
A. Personally?
Q. Yes, sir; have you not personally made payments?
A. No, sir; the estate had made advances.
Q. Hadn't you personally?
A. No, sir; not a cent.
Q. Hadn't you personally made the payments which constituted these advances?
A. You mean drawing the checks; I don't recollect who they were drawn by; all three of us may have drawn them, and they may have been drawn by W. B. Cutting or by Mr. Brown.
9070 Q. Prior to that time were not all the advances made by check?
A. I think so.
Q. Were all the checks drawn on the same bank?
A. Yes, sir; the American Exchange Bank.
Q. Who kept that check book?
A. At that time Mr. Brown.
Q. Do you know the total amount of those checks?
A. I said the other day it was something over $1,150,000.
Q. When was the first check drawn, $280,000?
A. I believe $291,000; I answer from memory.
Q. When was that?
A. I think some time in the fall of 1878.
Q. When was the last check drawn?
A. I think it was—well Mrs. Bayard's estate, as you remember, gave a guarantee that the floating debt should not exceed $450,000.
Q. You gave that personal guarantee, did you not?
A. No, sir; and it didn't exceed that amount, but I don't remember when the last check was drawn.
Q. Is there any schedule of that indebtedness—the $450,000?
A. Not that I remember; there was at that time.
Q. Who had such a schedule?
A. The schedule, I think, was in the hands of William A. Stephens, trustee.
Q. If you will turn to page 163 of the appendix you will find your personal guarantee, and see whether you wish to correct your testimony?
A. Yes, sir; I do correct it; then I had forgotten the matter altogether.
Q. You did personally guarantee that indebtedness?
A. It is very evident from this statement.
Q. By making that guarantee didn't you see a schedule of the indebtedness?
A. Yes, sir—I don't remember it.
9071 Q. Who prepared that schedule?
A. Mr. Stephens, trustee.
Q. Had a second mortgage then been made?
A. I am not sure; I don't think it had been.

Q. It was made for the purpose of covering that indebtedness?
A. I think so.
Q. And it was a part of this transaction to make that second mortgage; was it not?
A. As far as I can remember, yes, sir.
Q. Had the $750,000 of bonds on the first mortgage then been issued?
A. I think so.
Q. Did you have them personally?
A. No, sir.
Q. Who did?
A. They were held by myself, I think, and others as representatives of Mrs. Bayard.
Q. Who individually?
A. They were simply held in my safe belonging to Mrs. Bayard, to which all three had access—W. B. Cutting, M. B. Brown, and myself.
Q. When were the other 450 shares delivered, and to whom?
A. They were delivered to Mrs. Bayard—her representative.
Q. Who?
A. I don't remember whether I received them, or one of the other [illegible].
Q. How long after this guarantee was it when they were received?
A. Well, I answer almost immediately.
Q. You have them yet?
A. No, sir; they have been paid.
Q. All of them?
A. Yes, sir.
Q. The $450,000?
A. Yes, sir.
Q. Were there any notes to represent that $450,000 before the mortgage?
A. Yes, sir.
Q. This mortgage was substituted for these notes?
A. Yes, sir.
Q. Were they surrendered when these bonds were given;
9072 these 450 bonds, were they 450 bonds of $1,000, or were they 45 notes?
A. Forty-five notes and a second mortgage, but they were not coupon bonds.
Q. Nor $1,000 bonds neither?
A. No, sir.
Q. Are they paid?
A. Yes, sir; I think they have been paid the first of March, the last.
Q. Now, the $750,000, is that paid?
A. No, sir.
Q. Have you those bonds?
A. Yes, sir; with the exception they have been taken up by the sinking fund.
Q. Have you refreshed your recollection what individual received

that $50,000 and the $300,000 which was paid at the time of this transaction?

A. Yes, sir.

Q. State your personal recollection of it?

A. My recollection of the transaction goes nothing beyond what I have here, the entry in Mrs. Bayard's book, but I can give what I think was the practical utility of it.

Q. What is wanted is your recollection of the transaction; refresh your recollection by any thing you choose?

A. The item I have here does not refresh my recollection; it recalls one or two circumstances, but I am not sure I am correct.

Q. Who received the money?

A. It was received by Mrs. Bayard, $350,000.

Q. Who paid it to her?

A. The Municipal Gaslight Company.

Q. Through whom?

A. I suppose its president.

Q. Who?

A. I don't know; I have no record.

Q. What did she do with the money?

A. Returned it to the Municipal Gas-light Company.

Q. Did she deposit it to her own credit in the bank?

A. Yes, sir; and then drew her check to the order of the Municipal Gas-light Company.

Q. To whom was that check given?

A. I don't remember.

9073 Q. Who signed the check?

A. I am not sure whether Mr. Brown—I think it was signed by Mr. Brown on the same date, the account is in the entry that I have.

Q. What is the memoranda that enables you to be sure about this?

A. It is an extract from Mrs. Bayard's cash book.

Q. Well, read it; in whose handwriting was that extract made in that cash book?

A. Mr. Brown's which is as follows:

Memo. from Mrs. Elizabeth Bayard's cash book.

March 16, 1880. To Municipal Gas-light Company, exchanged checks with them in carrying out Municipal G. L. stk. sale	$350,000.00	
March 16, 1880. By Municipal Gas-light Company, received two of their checks in exchange for one of mine	$300,000.00	
	$50,000.00	
		$350,000.00

Q. The foregoing extract is copied from Mrs. Elizabeth Bayard's cash book, is it not?

A. Yes, sir; the word "mine" means Mrs. Bayard's, and it means $350,000 check.

Q. The check that was received was signed by Mr. Francklyn as president of the Municipal Company, was it not?

A. I suppose so.

Q. Do you remember on what bank it was drawn?

A. No, sir.

Q. Do you remember who indorsed that check for deposit?

A. Mr. Brown, I suppose.

Q. Do you remember to whose order the two checks in exchange of $300,000 and of $50,000 were drawn?

9074 A. I suppose they were drawn to the order of Mrs. Elizabeth Bayard; Mrs. Bayard only gave one check to the order of the Municipal Gas-light Company.

Q. Who indorsed that check?

A. I don't know.

Q. Where is that check?

A. I suppose among the canceled checks of Mrs. Bayard of that period.

Q. On what bank was that drawn?

A. On the American Exchange Bank.

Q. Who has those return checks?

A. I presume they are in our office, if preserved, but I don't know whether it is preserved.

Q. It is only four or five years ago.

A. We don't generally keep them that length of time; if you desire it, I will try and look it up if I can.

Q. It is either in your custody or Mr. Brown's?

A. It is in the custody of one of us three.

Q. We desire that check?

A. Very well; I will look it up and see if I can find it.

Q. Now, are you correct in respect to the number of Municipal shares of the Municipal stock you then received?

A. I believe I said thirty-five hundred and fifty, which should have been thirty-five hundred; that's all.

Q. Do you remember whose certificates they were?

A. No, sir; I don't.

Q. Do you remember how many certificates there were?

A. No, sir; I don't remember.

Q. Are those original certificates which they issued, as I understand you to say, and that you surrendered last fall to the Consolidated Company?

A. Yes, sir; as belonging to Mrs. Bayard.

Q. How many of them did belong to Mrs. Bayard at any time?

A. I don't remember the exact number, but the bulk of them belonged to her.

9075 Q. Was any distribution whatever made of those thirty-five hundred certificates prior to the time that you surrendered them to the Consolidated Company?

A. Yes, sir; they were divided *pro rata*, I believe, among the various stockholders of the Knickerbocker Company.

Q. Were they not divided by Mr. Stephens under this trust agreement?

A. No, sir.

Q. Who made that distribution?

A. The estate of Mrs. Bayard, her representatives, through Mr. Brown, I believe.

Q. Where is the list of persons who participated in that distribution?

A. I don't believe there is any, sir; there were only three or four; it was a matter of only a pencil figure; I don't think there was a list kept.

Q. Your recollection of what that distribution was in fact?

A. I can only state it was a *pro rata* distribution of the number of shares of stock held by William A. Stephens, trustee, and John Sickels, John W. Ambrose, Mr. Howes, Pierpont Morgan and Mrs. Bayard.

Q. How much did Mrs. Bayard retain of that block, about 2,400?

A. I could not tell you exactly, but I should say about that number.

Q. You have said that Mr. Stephens was trustee for several parties in interest who made advances covering all this guarantee indebtedness, and the estate of Mrs. Bayard made advances to the extent of about $1,150,000; what else besides this advance of $1,500,000 was Stephens trustee for?

A. I don't think he was trustee for any thing else.

Q. Who else was interested in the trust except the Bayard estate?

A. I don't think that anybody else was interested at all in that trust; I didn't know that I had stated anybody else was; I don't remember that he acted for anybody else now; he may have, though.

9676 Q. To what extent did he have any interest in that guaranteed indebtedness—I mean Mr. Stephens?

A. He had no personal interest.

Q. Nor did John Sickels, did he?

A. Not as far as I remember, sir; not that I know of; I don't recall.

Q. Neither he nor Sickels had any interest except in this Municipal stock that was distributed, as you have described?

A. That is all I remember, sir; instead of 2,500 shares, I would state that is 2,400 shares.

(By the CHAIRMAN:)

Q. You will have your evidence stand about 2,400 shares?

A. Yes, sir.

The CHAIRMAN: The stenographer will make this read "2,400" shares in the witness's evidence.

Q. Were you a stockholder to any extent in the Municipal Company prior to this transaction?

A. What transaction, sir?

Q. This of March, 1880, the sale of the Knickerbocker?

A. No, sir; I had no interest whatsoever.

Recess until 4 o'clock p. m.

TUESDAY, *December*, 1885, 4 p. m.

Hearing resumed.

Mr. TREMAIN: Mr. Cutting, the last witness, sends the following check in response to a demand upon him to produce the same:

"No. 728. NEW YORK, *March* 16, 1880.

The American Exchange National Bank, 128 Broadway.

Pay to the order of Municipal Gas-light Company three hundred and fifty thousand dollars. $350,000.

E. BAYARD,
By R. FULTON CUTTING,
Attorney."

9077 This check being indorsed "for deposit Municipal Gas-light Company, Charles G. Francklyn, president. Indorsement guaranteed. Chase National Bank."

CHARLES G. FRANCKLYN, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. Look at the check now shown you, dated March 16, 1880, and see if it bears your indorsement?

A. Yes, sir; it does.

Q. You deposited that check, did you, to the credit of the Municipal Gas-light Company?

A. I don't know as I did; I indorsed "for deposit."

Q. With the expectation that it should be deposited, and for all you know it was?

A. Yes, sir; I believe so.

Q. That check appears to have been paid?

A. Yes, sir.

(Check read in evidence as heretofore set forth.)

Q. At or about the time this check was given, you drew a check of the Municipal Gas-light Company for $350,00-, and signed one, did you not?

A. I don't know whether it was one or two checks.

Q. One of $300,000 and one of $50,000?

A. I don't know whether I signed it; it was drawn.

Q. To whom did you give that check?

A. I think *it* to Mr. Day.

Q. Were you present when that transaction was closed with Mr. Cutting?

A. Yes, sir.

Q. Mr. Day was present?

A. I think he was.

Q. Representing the Municipal?

A. Yes, sir.

Q. Who else was present?

A. I think Mr. Allen was there and Mr. Stephens and Mr. Cutting, Mr. Sickels, I think, but I am not sure.

Q. You issued, did you not, on or about March 16, 1880,
9078 3,500 shares of the Municipal stock?

A. Yes, sir.

Q. You deemed this check a payment at par for that stock, did you not?

A. I did.

Q. There was no other payment for that stock, was there?

A. Not any.

Q. You remember the check of March 13, 1880, for $300,000, issued by the Municipal Company and signed by you?

A. No, I don't remember it.

Q. Do you not remember a circumstance of a check of $300,000 being made on the Chase National Bank by the Municipal Company, about March 13, 1880, in connection with this transaction?

A. No, I don't recollect it.

Q. If such a check is found do you remember the purpose for which it was issued?

A. No; my recollection of it is that there were either one or two checks drawn with regard to this transaction; I don't know of any other check with reference to this transaction.

Q. Do you remember a sum of $300,000 being paid by the Municipal Company to anybody else except to the representatives of the Bayard estate at or about March 13, 1880?

A. I do not.

Q. To the best of your recollection there was no other such transaction or check?

A. Not that I know of.

Q. Now, if such a check was drawn at or about that time did it have relation to this transaction?

A. It did not.

Q. Did it have any relation to a settlement of any claim for damages that the Knickerbocker was making against the Municipal Company?

A. There was a check of $300,000 paid in settlement of damages.

Q. To whom?

A. Paid to the Cuttings—to the Cutting estate—given to
9079 Mr. Day; it was to settle a suit and to pay $50,000 for the Knickerbocker Company.

Q. Was that all there was of that transaction?

A. Yes, sir; and Cutting was to pay the company $350,000 for thirty-five hundred shares of stock.

Q. With whom was the arrangement made?

A. With Bayard Cutting.

Q. As the result of that transaction thirty-five hundred shares of stock was given to the Bayard estate?

A. For that $350,000.

Q. And those thirty-five hundred shares was part of the issue of a million dollars when the capital was increased from two millions to three millions?

A. I think so.

Q. Who was paid $50,000 at that time, if any one?

A. No one that I know of except the Cutting estate.

Q. The Cutting estate?

A. Mr. Cutting or the estate.

Q. In your testimony before the last Senate committee on March 4, 1885, you are reported as saying that the stock of the Knickerbocker was acquired by the Municipal in 1880 and paid for out of their surplus earnings with $50,000; to whom was that $50,000 paid?

A. Mr. Cutting.

Q. It was part of the $350,000, was it not, of the check of the Municipal for which this was received in exchange?

A. Yes, sir.

Q. This being the check last above quoted; who, if any one, paid to the Municipal Company a balance of $650,000 of that increased capital from $2,000,000 to $3,000,000?

A. The stockholders took a good deal of it at par; I don't know how much; the books will show exactly.

Q. What became of this money that was represented by this check last above quoted when deposited to the credit of the Municipal Company?

9080 A. Three hundred thousand dollars of it in the settlement of a suit which the Knickerbocker had against us.

Q. Had not that previously been paid?

A. It might have been dated the day before or the day after; I don't know which.

Q. What was the purpose in the Municipal arrangement of an exchange of checks on the 16th of March, 1880, of $350,000?

A. I think that has already been explained; Cutting purchased thirty-five hundred shares of stock and paid for them; the Municipal used the money which Cutting paid to settle the suit which the Knickerbocker had against the Municipal Company and purchased the fifteen thousand shares of stock—$350,000 paid in and $350,000 drawn out; you cannot make any more than that out of that transaction.

Q. What was the purpose of this exchange of checks for $350,000 that appears to have taken place on the 16th of March, 1880? Why were those checks exchanged?

A. Perhaps for convenience in business, I suppose.

Q. Was it not for the purpose of having it appear that the stock was subscribed for at par?

A. It was subscribed for.

W. B. CUTTING, a witness *sworn* by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You were present on or about the 16th of March, 1880, when the transaction was had between the Municipal Company and the Bayard estate, were you not?

A. Do you mean the passing of these checks?

Q. Yes, sir.

A. I cannot say that I was; I don't remember of it.

9081 Q. When was the first knowledge you had of that transaction?

A. It was some time in the late winter or early spring of 1880.

Q. From whom did you gain that knowledge?

A. I think Mr. Francklyn.

Q. Did you conduct a negotiation with Francklyn upon that subject?

A. I did, sir.

Q. Were all the results of that negotiation reduced to writing?

A. I don't know that they were.

Q. You had some understanding with Francklyn in the performance of which this transaction was carried out?

A. Yes, sir

Q. And that understanding was arrived at, was it not, early in March, 1880, or about that time?

A. I should think a little before that time—thereabouts.

Q. You understood that Mr. Francklyn was acting for himself or the Municipal Company?

A. I acted with him personally, sir.

Q. Did he say anything to you during these negotiations about the increase of the capital stock of the Municipal Company?

A. I believe he did; yes, sir.

Q. What did he tell you about that?

A. Well, I could not say what he told me as to the amount; I understood there was to be an increase, however.

Q. And of that increase did he say that some of it should be at his disposal for the purpose of this transaction?

A. I so understood it.

Q. You understood, didn't you, that you should have a part of that stock?

A. I understood that the Knickerbocker stockholders should have a portion of the Municipal stock; I did not care where it came from.

Q. As finally arranged between you what was the understanding between you and Francklyn?

9082 A. The details of the negotiation you would like to have?

Q. Yes, sir.

A. My remembrance of it is that we were to sell to Francklyn a majority of the stock of the Knickerbocker Gas-light Company, with the privilege that all the stockholders were to participate upon the same terms, on the debt being assumed, or left as it was; there was no agreement, I believe, as to the guarantee of the debt; the first mortgage to be left as it was, and the second to be secured by a second mortgage not to exceed $400,000, and that the Municipal stock should be paid for by the Knickerbocker at the rate of thirty-five shares for one hundred and fifty, there being an understanding between Francklyn and me that what work was necessary to complete the Knickerbocker, to make the mains, etc., should be done.

Q. At whose expense?

A. At the future stockholders'.

Q. Of the Municipal?

A. I assumed it to be borne by the future stockholders of the Municipal Company after the Knickerbocker should become the owners in it; what was necessary to put the property and works in condition.

Q. Who was to advance the money?

A. The party who should buy the stock of the then Knickerbocker stockholders.

Q. Who had purchased for the Municipal Company; that is, as you understood it?

A. Yes, sir; but the negotiation was between Mr. Francklyn and myself; I understood that the Municipal took it.

Q. And that the Municipal Company was to pay for those improvements upon the Knickerbocker works?

A. Yes, sir.

Q. Was there any substantial deviation from that under-
9083 standing in the consummation of the transaction?

A. Not in result; no, sir.

Q. The result then was, was it not, that for fifteen thousand shares of stock of the Knickerbocker Company thirty-five hundred shares of the Municipal stock were issued?

A. Thirty-five hundred shares were received.

Q. I should have used that term, "that you received."

A. The stockholders of the Knickerbocker did.

Q. You received it?

A. No, sir; I don't think I did.

Q. It was either yourself or Stephens, was it not?

A. I have an impression it was Mr. Brown; he received it for the estate of Elizabeth Bayard, who held a majority of the stock; and I believe it was distributed by Brown, or perhaps with the assistance of Stephens, among the stockholders of the Knickerbocker Company.

Q. You mean all above that which was apportioned to Mrs. Bayard?

A. Including her; she was a stockholder.

Q. Was there $50,000 in addition to that stock also received?

A. No, sir.

Q. Your arrangement didn't contemplate anything of that kind?

A. No, sir.

Q. You didn't receive any such check, did you, for $50,000?

A. Yes, sir.

Q. From whom?

A. I could not say.

Q. Have you any recollection as to who it was received from?

A. I have not; it was not in addition to the thirty-five shares of stock.

Q. Independent of any other consideration, do you not remember to have received a check of the Municipal Company, dated on or about March 13, 1880, and drawn to the order of Mrs. Elizabeth Bayard for $50,000?

A. I think there was such a check received; yes, sir.

9084 Q. Was that in pursuance of the arrangement of Francklyn?

A. Yes, sir.

Q. Did that check go on deposit to the credit of the estate of Bayard?

A. Of Mrs. Elizabeth Bayard, yes, sir.

Q. And did you also receive a check for $300,000 of the same tenor?

A. Yes, sir.

Q. That also went on deposit?

A. When I say "I" I mean the estate.

Q. And it was drawn against two checks that this check dated March 16, 1880, was drawn?

A. Yes; this dated March 16, and you mentioned the other, March 13; I would say the transactions were drawn simultaneous.

Q. Were there any other checks received by the Bayard estate at or about that time than the two checks, the one of $50,000 and the one of $300,000, from the Municipal?

A. No, sir.

Q. In respect to closing this transaction did any other money pass either way?

A. I think not; no, sir.

Q. Was that the whole transaction?

A. Yes, sir.

Q. No property passed of any kind whatever?

A. The property of the Knickerbocker Gas-light Company went with the stock.

Q. No other property except the certificates of stock?

A. No, sir; yes, I think I ought to change that answer; there was an abandoned suit for damages against the Municipal Company.

Q. That has been covered as a part of the transaction. There was an agreement that the suit should be abandoned?

A. Yes, sir.

Q. There was no other property that should pass?

A. No, sir; there was no other; that is my recollection of that transaction.

Q. Did you direct that suit to be instituted?

A. No, sir.

9085 Q. Who did?

A. The directors of the company, I presume.

Q. You knew when it was instituted?

A. I could not say that I did.

Q. Don't you know, as a matter of fact, that Mrs. Bayard had already advanced money before that suit was commenced?

A. I don't.

Q. When did you first know of that suit?

A. I could not tell you that, sir; I don't remember.

Q. Who first told you of that suit?

A. I could not say, sir.

Q. Were you a member of the board of direction of the Knickerbocker Company?

A. No, sir.

Q. Your brother was?

A. Yes, sir.

Q. Do you know on what that suit was founded?

A. I can give you my impression that it was an old contract between the Knickerbocker Company and the Municipal, by which the Municipal Company agreed to dispose of the right to use their process to the Knickerbocker Company above Fifty-ninth street, I think; that suit was brought for damages for a breach of that contract by the Municipal Company.

Q. Did you ever hear anybody advising that $300,000 could be recovered in that suit?

A. No, sir.

Q. Was that ever suggested when this transaction was closed in your hearing?

A. I don't remember whether it was or not.

(By the CHAIRMAN:)

Q. I understand you have heard of no such suggestion being made?

A. I don't remember; I presume when you say "when the transaction was closed," you mean my transaction with Francklyn?

Q. March 16?

A. Do you mean when the transaction was closed that it was when these checks were passed?

9086 Q. Either time?

A. I think when the checks were passed there was something said.

Q. By whom?

A. I think by Mr. Day, but I would not be sure; of course I knew when the checks were passed that the Municipal Company had undertaken Francklyn's contract.

Q. Did you make a contract in writing with Francklyn?

A. Yes, sir.

Q. The memorandum—have you the duplicate?

A. It has been destroyed long ago; it was a memorandum on a half sheet of note paper.

Q. Signed by Francklyn?

A. Yes, sir.

Q. You have given us the substance of it already?

A. Yes, sir.

Q. At that time when you commenced to negotiate with Francklyn was not all the stock of the Knickerbocker Company which was not owned by the Bayard estate held in trust?

A. No, sir.

Q. How was it held?

A. By some individual holders.

Q. Whose names have been already mentioned?

A. My brother most of it, and the McKenzie and Sayre Manufacturing Company.

Q. How much did they have?

A. I could not say.

Q. Didn't Stephens hold it in trust for them?

A. I don't think he did; I think he was trustee of the Bayard estate only.

Q. Did you proceed to buy that up, those outstanding shares, before this transaction was closed?

A. No, sir.

Q. On the faith of this agreement with Francklyn did anybody proceed to procure those outstanding shares?

A. All the stockholders were notified of the agreement, and notified to participate.

Q. How were they to participate?

9087 A. By receiving thirty-five shares of the Municipal for every one hundred and fifty of the old stock.

Q. Was not that stock procured and held in trust prior to March 16, 1880, for the purpose of closing this transaction?

A. I don't think so.

Q. There appears to have been a trust agreement executed on or about March 23, 1880, which recites that a block of 14,995 shares of the capital stock of the Knickerbocker Company have been procured; was not that practically accomplished, by agreement or otherwise, prior to the time these checks passed?

A. Yes, sir; there was an agreement to that effect, I should think, before those checks passed.

Q. With all the stockholders of the Knickerbocker Company?

A. Yes, sir; I think so.

Q. And in pursuance of that agreement the shares were subsequently procured and enlarged under this trust?

A. I don't know about that trust; I don't remember it; I don't think I was a party to that.

Q. But the trust was apparently the result of your delivery of that block of stock?

A. I don't know where it went, sir.

Q. What I want to know is, when you became ready to make that delivery what you remember about that?

A. I don't remember; I could not state from actual memory.

Q. You substantially had the control of 15,000 shares or you could not have closed this transaction on March 16?

A. Yes, sir; I think that is true, otherwise the check would not have been for $350,000, unless the whole stock had been delivered.

(By the CHAIRMAN:)

Q. This recites that all the stock of the Knickerbocker except five shares had been transferred to these gentlemen as trustees on

9088 or about March 23, 1880?

A. I don't know that fact; it is the first time I have heard of it; really I cannot remember of it.

Q. There was, therefore, was there not, an apportioning among the stockholders of the Knickerbocker Company, exclusive of the estate of Bayard, eleven hundred shares of the Municipal stock?

A. I could not say, sir.

Q. Well, was the estate of Bayard represented, or in any way interested in the stock held by these five trustees under the agreement or trust of March 23, 1880?

A. I know nothing of the agreement except what I have heard

now; I suppose Mrs. Bayard's estate would all have an interest before that check was given.

Q. So that after that time the Bayard estate had no interest and received no advantage or benefit of any kind from the Knickerbocker stock?

A. No, sir, except what it derived as holder of the Municipal Gaslight Company's stock.

Q. You transferred that Municipal stock into Consolidated stock, did you not?

A. Yes, sir, such portion as I inherited from Mrs. Bayard as one of the heirs.

Q. Did you have any other transaction of any kind whatever with the Municipal Company or with Mr. Francklyn?

A. Well, do you mean growing out of this matter?

Q. I mean of any kind whatever?

A. I decline to answer that.

Q. Did you not make a loan to Francklyn?

A. I decline to answer that; that is a matter of personal business of my own, and I don't see the use of testifying to it before the Committee.

Q. Within a few months anterior to March, 1880, had you made any loans to Francklyn, directly or indirectly?

A. I have no remembrance of ever having done it.

9089 Q. Either before that time or afterward?

A. No, sir, I don't remember of it.

Q. Did you purchase any other Municipal or Knickerbocker stock of Francklyn as principal or as representative at any time?

— I don't think I ever did, no, sir.

Q. You know what the price of Municipal stock was in March, 1880?

A. Approximately 170, sir; it may have been 150, and it may have been 180; it is simply guess work.

Q. Between March, 1880, and the time you parted with the stock of the Consolidated Company did you have any transaction whatever with Mr. Francklyn?

A. Well, Mr. Chairman, I don't see the necessity of these questions.

Senator MURPHY: It refers to private business connected with gas companies, does it not?

The CHAIRMAN: The question simply calls for yes or no.

A. I presume I have.

(By the CHAIRMAN:)

Q. Your answer will be yes to that?

A. I don't say yes, but I presume I have; I had just leave say yes to it; I have had business with him; yes, sir.

Q. Did those transactions involve the payment or passing of any money?

A. I don't remember, sir.

Q. Did this transaction involve the delivery of any securities?

A. I believe not.

Q. Either to or from yourself?
A. I believe not, sir.
Q. Did this transaction directly or indirectly concern any of the securities of any of the gas-light companies of New York?
A. No, sir.
Q. Did you make any loans to Francklyn on any gas collaterals?
A. I must say I did not do it.
Q. Was there any such transaction by the Bayard estate
9090 or by your brother?
A. Not to my knowledge, sir; the checks which we received were not in addition to the stock.
Q. I understand it as you say; then, as I understand your testimony, it is that the stockholders of the Knickerbocker received no other or further money consideration, or any other consideration whatever, than the Municipal shares at the rate of thirty-five of the Municipal for one hundred and fifty of the Knickerbocker?
A. Yes, sir; that was the practical result of the transaction, and nothing else—3,500 shares for 15,000 shares; the transaction was that the stockholders were to receive in the proportion of thirty-five of the Municipal for one hundred and fifty of the Knickerbocker, or 3,500 for 15,000.
Q. Do you know how soon after November 11 you exchanged that Municipal for Consolidated stock?
A. I don't know; the stock books of the Consolidated Company will show that.
Q. How long after you acquired the Consolidated stock did you continue to hold it?
A. I hold some of it now.
Q. I understood your brother to say that he has sold his?
A. I presume by that he has.
Q. The block has been divided between the representatives of Mrs. Bayard?
A. Yes, sir.
Q. Have you sold any part of yours?
A. Is that a fair question?

(By the CHAIRMAN:)

Q. It is proper.
A. You have traced the transaction through the Municipal Company and the Knickerbocker, and it comes into the hands of third parties.

(By the CHAIRMAN:)

Q. You have received your part of the Consolidated stock, and you have a part of it still?
A. Yes, sir.

(By the CHAIRMAN:)

Q. And have sold a part of it too?
A. Yes, sir.
9091 Q. So far as you are concerned through whom did you make the sales?

A. I don't remember, sir.
Q. Were they all sold through the same party?
A. I could not say.
Q. You don't know of an understanding between the holders of the Consolidated stock, since the consolidation, with a view to its sale?
A. I don't.
Q. Or with a view to raising money upon it?
A. No, sir.
Q. Any of this stock used for such purposes?
A. No, sir.
Q. Have you had your certificates all the time?
A. Yes, sir.
Q. Can you name any of the houses through which you made sales?
A. I could by referring to my books.
Q. Have you several accounts with several brokers?
A. I have no accounts through any.
Q. Did you sell that through brokers?
A. Very likely.
Q. Did you give any to Francklyn to sell?
A. No, sir.
Q. Please look at your books to see through whom you made those sales?
A. I should decline to answer that.
The CHAIRMAN: If the Committee thinks the questions are proper I shall sustain them, and if the witness declines you can anticipate our duty in the matter as well as we.
The WITNESS: Yes, sir.

Examination suspended.

9092 FIFTH AVENUE HOTEL,
NEW YORK, *December* 2, 1885.

The Committee met pursuant to adjournment.
Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.
Henry E. Tremain, Esq., appears as counsel to the committee.

JOHN SICKELS, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are secretary of the Knickerbocker Gas-light Company?
A. I was.
Q. From what time to what time?
A. From its organization until it was transferred to the Municipal Company; I can't tell you the dates; the organization papers will show that.
Q. Did you perform any services whatever after March, 1880?
A. Not after the transfer.

Q. Who were the officers in 1876, when it was first organized?
A. I could not tell you without referring to the papers.
Q. Mr. Stephens?
A. No, sir, he was not there in 1876; for two or three years prior to 1880 Stephens was the president and I was the secretary and a director; George Howes, M. B. Brown, R. Fulton Cutting comprised the board.
Q. Did you ever see any books showing the transactions of the Knickerbocker Company during these years?
A. Yes, sir.
Q. When did you last see those books?
A. The day of the transfer to the Municipal Company.
Q. What did you see done with them?
A. I wrote books up, the records of the last meeting, at the time of the transfer?
9093 Q. Was there a ledger?
A. Yes, sir.
Q. Was that written up?
A. Yes, sir, I wrote up all the books; there was a ledger and a transfer book.
Q. Journal or day book?
A. Certificate book and transfer book.
Q. Do you mean stock ledger?
A. Yes, sir.
Q. I mean the general ledger?
A. There was no general ledger.
Q. Didn't the company keep a ledger and cash book?
A. Yes, sir, but I don't think they were ever after in my control.
Q. When did you last see them?
A. I don't think I ever saw them; that is to say, in my control to examine them.
Q. When did you see the books without examining them?
A. I could not tell.
Q. While you were there as secretary was there not a cash book?
A. Yes, sir, it was kept by Stephens.
Q. Was there any kind of a ledger?
A. I think there was.
Q. Was there a journal or a day book?
A. I think the cash book showed all the disbursements, and the bills were the vouchers.
Q. You say the cash book showed the disbursements?
A. There was a check book which you might say was a journal; it would show the disbursements, and then the bills or the notes, whatever were paid, those were kept, the vouchers, and they were handed over by the treasurer to those that furnished the money.
Q. And who was that?
A. The money would be received from the Messrs. Cutting.
Q. Is there any account in the case of what that total amount was?
A. Nothing more than I could generalize, about $1,-
9094 150,000.
Q. Up to what time?

A. Up to March, 1880.
Q. Will not the check book show all of those moneys?
A. I think it will, every dollar.
Q. What bank?
A. The American Exchange Bank.
Q. Where is that check book?
A. I could not tell you.
Q. When did you last see it?
A. I think on the day of the transfer.
Q. Who had it then?
A. Mr. Stephens could tell.
Q. You signed the statement of debts of the Knickerbocker Company on March 11?
A. Yes, sir.
Q. What information, if any, did you have before you at that time respecting that indebtedness?
A. I knew it to exist.
Q. You mean to say you had personal knowledge of a $750,000 mortgage?
A. Yes, sir.
Q. Did you sign the bonds that were issued?
A. I signed them as secretary.
Q. Can you say when those bonds were issued?
A. There were $750,000 of bonds printed, and as the money was required for carrying on the work then the bonds were issued, and at different dates from the times we started until the transfer; I think that is the way.
Q. Was the money received by the company dollar for dollar?
A. Yes, sir; there was not a dollar of bonds issued that did not represent money spent.
Q. Was it spent before the Cuttings had received the bonds?
A. No, sir; if we wanted $100,000 we would fill up the bonds, then issue them, and the Cuttings would furnish the money to the treasurer, who would furnish the whole amount, if it was $100,000, say.
9095 Q. This floating indebtedness of $450,000, for which a mortgage was made in March, 1880, and which appears to have been represented by forty-five different notes of $10,000 each, made at or about that time, was exhibited to you in what way?
A. Every dollar of it was spent.
Q. At that time?
A. That was the indebtedness that was due; we made it nominally $1,200,000; that included the bonds; the $450,000 was the money that had been expended in material and labor.
Q. Do you know what was the capacity for production of the Knickerbocker works in March, 1880?
A. At that time the works were in ruins—the inside work—the oil had taken fire and set fire to the works and it blew up.
Q. It was not then used for producing gas?
A. It had been up to the time of the fire, and the fire occurred a few days before the transfer; before the money was paid the Munic-

ipal Company took the property of the manufacturing department in ruins?

Q. Was it all injured?

A. No, sir, not a dollar; some of it.

(By the CHAIRMAN:)

Q. You say the Municipal took the Knickerbocker property in ruins?

A. They accepted the property as it stood.

Q. How did it stand?

A. The retort house, and the generator and the different machinery there was in ruins; the oil had got fire and blew it up.

Q. At the time the Knickerbocker works were not capable of producing gas?

A. No, sir, not at that time—allow me to correct that; we had some benches that were making 100,000 feet, and the hydrogen generator; we had some benches in the manufacture of coal gas; those were there.

9096 Q. You think that their condition at that time would render them capable of producing from 100,000 to 150,000 feet per day?

A. Yes, sir.

Q. You was not then producing it?

A. Yes, sir, we were mixing gas then and selling it.

Q. As a matter of fact what was the extent of the mains that were then laid?

A. We had about sixty-eight miles of mains laid.

Q. Were they in good order?

A. There was never any such pipe laid down in the United States in any gas company; it was the only gas company that had a thirty-inch main.

Q. Were these mains then in order?

A. Yes, sir.

Q. Is there any record of the services and mains then in use by the Knickerbocker?

A. That could be found at the works, that was in charge of a man who works where the gas is sent out; I could not tell you the exact number of meters, we had some 2,000 meters, I think, set, and how many were in use I could not tell you.

Q. You mean by "set" ready for use?

A. Yes, sir.

Q. How many in use?

A. There was a large number; I could not tell you.

Q. About 600?

A. I think there were.

Q. How many services; is it your best recollection there were about 600.

A. I think more than that; I should say six hundred, and I should judge more than that.

Q. That is your best recollection?

A. Yes, sir; it is some time ago; I could not tell you.

Q. Was there any appraisement of the value of the Knickerbocker property at that time made by any one?

A. All the negotiations were outside of Stephens and myself; we knew nothing about it.

9097 Q. Were you interested in the transaction in question?

A. Yes, sir.

Q. State the extent of your interest at that time in the transaction? You held some stock first in the Knickerbocker?

A. Yes, sir; my interest was 250 shares of the Knickerbocker stock.

Q. For that interest you received what as the result of that transaction?

A. Nothing.

Q. Didn't you receive Municipal stock?

A. Not until after March; then I did.

Q. For that two hundred and fifty shares of Knickerbocker stock you received how much Municipal stock?

A. I think I received about the same amount.

Q. You didn't receive Municipal stock at the rate of thirty-five shares of Municipal for one hundred and fifty shares of Knickerbocker, did you?

A. No, sir; I think I received the value of the amount of the face; that is, $25,000 worth for $25,000 worth of the Knickerbocker.

Q. You mean $25,000 of Municipal at par?

A. No, money; I received the money from Cutting.

Q. You turned over your Knickerbocker stock to Cutting and received the money for it?

A. Yes, sir; I received the stock and turned it back to him in settlement of another matter.

Q. You sold your Knickerbocker stock to Cutting?

A. No, sir; I owed him some $10,000 or $11,000 for another interest, and Cutting took my stock; I forget at what price, and gave me the difference in money.

Q. You did in effect sell him your Knickerbocker stock by the satisfaction of a debt and the balance in money?

A. Yes, sir.

Q. Was that transaction based on the market price of the Municipal stock?

A. I think he gave me more than that for the stock at that time.

9098 Q. But the estimate was based on that?

A. Yes, sir.

Q. I would like to know what was the price of the Municipal stock at that time, as near as you remember it?

A. I think it was about $1.80.

Q. As to your holdings, were there two hundred and fifty shares in your name?

A. No, sir; all the stock was held in trust; I think the stock was in my name, 250 shares, and I think Stephens was the trustee and held the stock, still I am not positive about the amount.

Q. Who else held any stock except yourself, Mr. Stephens and Cutting?

A. Mr. Ambrose and Pierpont Morgan; Stephens held for Ambrose.

Q. Do you know what Morgan received?

A. I could not tell you; I think it was all *pro rata;* he received stock, I think, but I don't state that as being positive.

Q. You have not had any interest in gas stock since then?

A. Not in any of these companies.

Q. Or in the Consolidated Company?

A. Nothing, no, sir.

Q. What, if any, contracts did the Knickerbocker Company have up to March, 1880, with the constituent companies?

A. None.

Q. What if any patents did they own?

A. They owned one patent, the McKenzie and Sayre; they acquired that at the time the Cuttings bought it, in May, 1878.

Q. Was money paid for that or stock?

A. Money; there was an agreement to use that patent and to construct the works; the right to use the patent was paid for through the construction account.

Q. Construction of works?

A. Of the manufacturing works.

Q. Construction of the apparatus?

A. Yes, sir.

9099 Q. In 1878?

A. Yes, sir, or 1880; it ran along there.

Q. That agreement was with whom?

A. McKenzie and Sayre Manufacturing Company and the Knickerbocker Company.

Q. Who had the construction?

A. McKenzie, the patentee.

Q. Who was the engineer?

A. He was the engineer.

Q. He was the engineer who constructed the works?

A. Yes, sir; of the manufacturing department.

Q. Was he paid in stock or cash for that?

A. I think in cash.

Q. That is a part of this $750,000?

A. Yes, sir, and the $450,000; the $750,000 were coupon bonds, and the $450,000 were represented by notes; all the payments to McKenzie were covered in those two amounts.

Q. Who has that contract?

A. I think it is among the company's papers; it naturally would be in the hands of the Municipal.

Q. Have you a copy of it?

A. No, sir.

Q. Do you know the total payments called for by that contract—do you recollect, I mean?

A. No, I could not tell you without reference to the books.

Q. What books?

A. The books of the Knickerbocker.

Q. What account?

A. The account that showed the disbursements.
Q. Mr. Yalden, do you find any such book?
Mr. YALDEN: No, sir.
Q. Do you remember any other contract made between the Knickerbocker Company and anybody else for construction?
A. There was a contract made with the Warren Foundry Machine Company.
9100 Q. About what was the total amount of payment called for by that contract?
A. I think it was about $400,000.
Q. That was for what?
A. Pipes.
Q. Was that paid?
A. Yes, sir.
Q. Do you remember any other contract?
A. One made with Mills & Ambrose for laying the pipes.
Q. How much was that?
A. I think about $400,000.
Q. Do you remember any other?
A. One made with the Goodwin Meter Company of Philadelphia.
Q. For 2,000 meters?
A. Yes, sir.
Q. What amount was called for to pay that?
A. Between $70,000 and $90,000.
Q. Do you remember any other contract?
A. The others were small; they were open purchases, the materials, they didn't go into the hundreds of thousands of dollars.
Q. The total amount was what?
A. There was the oil, the pipes and cocks, etc.; I think it would go to quite $150,000 for the whole.
Q. All of those were represented by these two amounts of guaranteed indebtedness?
A. Yes, sir; I want to correct that; there was a large amount paid for filling in and repairing the dock, and I think that was in the neighborhood of $100,000.
Q. To whom was that paid?
A. Mills & Ambrose.
Q. Was not that included in the amount you have mentioned?
A. No, sir.
Q. Are you sure it was as much as that?
A. Yes, sir, I think it was, I think there was one amount of over $30,000, and then it ran along as the needs of the company required it; I think it would go up to about $100,000.
9101 Q. Was the stock ever offered for subscription?
A. No; the whole stock was issued for the payment of the property; there was a large property there, some $1,200,000 had been spent on that property when it went into the hands of the receiver.
Q. All of the stock of the Knickerbocker Company was issued for the property?
A. Yes, sir.
Q. When it was organized?

A. Yes, sir.

Q. You had previously issued the stock of the Knickerbocker Company, and it was all issued for property that was purchased with that stock, the property being the old Union property?

A. Yes, sir, the stock of the Knickerbocker was issued for the properties formerly belonging to the Union Gas-light Company.

Q. Are there any other books relating to the stock of the Knickerbocker Company except the books that are here?

A. I don't know what books are here.

Q. Look at them (witness looked at books)?

A. This is the stock ledger of the Knickerbocker Gas-light Company in my handwriting; and this is the transfer book.

Q. When was that book opened?

A. August 25, 1876.

Q. What book is that?

A. The stock ledger marked "H. 1."

Q. This other book, when was it opened?

A. August 10, 1876, marked "H. 2."

Q. How many check books were there?

A. One check book, I think, sir; if I recollect it correctly there was an ordinary check book for opening an account which you will get at the bank, and there was then one made especially for the companies' use, I don't know of any others.

Q. Do you remember which officer of the Municipal Com-
9102 pany took those books?

A. I think the counsel of the company, Mr. Day; he was present.

Q. Do you remember where this transaction was closed?

A. At the office, 35 Pine street.

Q. Whose office?

A. The Knickerbocker Company.

Q. Was the cash-book there?

A. It was in the hands of the treasurer, Mr. William A. Stephens.

Q. What officer of the Municipal Company was that given to?

A. I couldn't tell you.

Q. Were there any other books of the Knickerbocker Company at that time in existence?

A. Besides those you have mentioned?

Q. Yes.

A. No, I don't think there was any; there might have been the letter-book.

Q. With the exceptions of these books which have been marked "H. 1," and "H. 2," there were no other books except the minute book of the board and two check books, a cash-book and a letter-book; do you remember any others?

A. No, sir.

Q. No general ledger?

A. No, sir.

WILLIAM A. STEPHENS, a witness called by the counsel to the Committee, being duly sworn, testified as follows.

Examined by Mr. TREMAIN:

Q. You was the president and treasurer of the Knickerbocker Gas-light Company from 1876 to 1880?

A. From 1878 to 1880.

Q. When the properties of the Knickerbocker Company were turned over to the Municipal, you was cognizant as a party to that transaction, as its president?

A. I was not to the fact that it was turned over to the Municipal Company at that time; I knew that the stock had been sold and transferred.

9103 Q. At that time, please state to the Committee what books of the Knickerbocker Company existed in addition to those that are now before us here, the stock-ledger and the stock-register of transfers?

A. No other books of the Knickerbocker Gas-light Company.

Q. What book or books did exist at that time, exhibiting the amounts paid for construction of various kinds, and for pipe, materials and labor, and moneys expended in and about the Knickerbocker works; just specify the books?

A. There was a cash-book kept by me as trustee, in the interest of Mrs. Elizabeth Bayard's estate, which embraced all of those items which you have just referred to; there was also a check-book kept in my name in trust for that account on the American Exchange National Bank; there was also a bill book, showing the notes which were issued, which formed a part of the item of $450,000, which has been referred to in this testimony.

Q. That is all the books that there were?

A. All that I can think of.

Q. And the vouchers representing those payments; did you have them?

A. The cash-book was given by me to Mr. Brown, as the representative of Mrs. Elizabeth Bayard, as one of the representatives; the cash-book was given by me to him, and the voucher; I am informed that they were afterward delivered by Mr. Sickles to Mr. Brown; that is hearsay; I believe they were.

Q. Is it a fact, between 1878 and March, 1880, in addition to the amount advanced by that estate, there was advanced to the Knickerbocker Company the sum of $50,000, by Pierpont Morgan, represented by bonds?

A. There was $50,000 of bonds sold to Pierpont Morgan for cash, at par and accrued interest directly.

9104 Q. Was that sale made by the Knickerbocker Company directly, or was it a part of the $750,000 previously issued to the Cuttings?

A. The $50,000 which Morgan received was a part of that $750,000 of bonds issued under the first mortgage; the cash for it was received and expended.

Q. Do you know what stock Pierpont Morgan received?

A. Five hundred shares.

Q. When was that issued to him?

A. It was delivered to him at the time he took the bonds, prior to 1880; all the stock belonged to individual stockholders, and it was held by me in trust, to represent them.

Q. And out of that block five hundred shares of Knickerbocker stock was given to Mr. Morgan; is that right?

A. If I am correct, that five hundred shares of stock, delivered to Morgan, was from a small lot of stock which we designated as treasury stock—stock to be used for special purposes.

Q. Nothing more was paid for it?

A. No, sir.

Q. Have you any papers of any kind whatever, relating to the Knickerbocker Company, of moneys expended on its works?

A. None whatever; they were all surrendered by me.

Q. Or to the Municipal Company?

A. Or to the Municipal Company.

Q. How much stock of the Municipal Company did you personally receive for your Knickerbocker interest; or, if money, how much money?

A. I received my *pro rata* share of 3,500 shares of Municipal stock; I cannot recollect the figures.

Q. Did you receive in the proportion of thirty-five shares of Municipal, for 150 shares of Knickerbocker?

A. Yes, sir; I received that from Mr. Brown.

Q. Did you subsequently part with your Municipal stock?

A. Yes, sir.

9105 Q. How long did you hold it?

A. A very little while.

Q. You parted with that to the Cutting estate?

A. No, sir; I sold it in the open market.

Q. State the total you represented?

A. I don't think I held any in my own name, except a sufficient amount to qualify me; it was all held in my own name in trust; all of which I was interested in for myself and others.

Q. That includes the Cuttings?

A. No, sir; I transferred before the Municipal stock was received; I transferred all that I held in trust to Mrs. Bayard.

Q. It appears, in evidence, that 3,500 shares of Municipal stock was issued in March, and received by the Bayard estate, and that about 2,500 shares of that block was retained by the Bayard estate, the balance of 1,100 elsewhere apportioned, some of it to Sickles; the question is how much to yourself and to anybody else?

A. I should have to refer to my memoranda, as to myself, to be exact, and that which was apportioned to others I have no means of knowing; I furnished Brown with the amount of stock held by others.

Q. How much did you hold personally; how many shares?

A. I think I held personally, representing 625, or approximately that.

Q. Did that represent Howe's interest?

A. No, sir.

Q. Did that represent Ambrose's interest?

A. No, sir.

Q. You know the amount of their interest?
A. I think 250 shares for J. W. Ambrose; that is all I know of; and I think the McKenzie and Sayre Manufacturing Company also held 200 shares of Knickerbocker stock, and I am not certain as to the amount.

9106 SAMUEL J. YOUNG, a witness called by the counsel to the Committee, having duly affirmed, testified as follows:

Examined by Mr. TREMAIN:

Q. You were a book-keeper in the Knickerbocker Company?
A. No, sir.
Q. In what company were you a book-keeper?
A. I have kept books in the Municipal Gas-light Company from its original organization until January, 1877, and from June, 1877, until November 11, 1884.
Q. And since that time where have you been kept?
A. At the office of the Consolidated Gas-light Company.
Q. In what capacity?
A. As a clerk.
Q. Having any particular matters in charge?
A. Any I was told to do.

Mr. TREMAIN: I suggest that your examination be suspended until we approach another topic.

JAMES YALDEN, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. Under the direction of this Committee you have made an examination of certain of the books of the Municipal Gas-light Company, with a view to ascertain what they may show touching its capitalization?
A. I have.
Q. Which books have you thus examined or had examined under your direction?
A. The ledgers, the journals, the books subsidiary, and the stock ledger and transfer book.
Q. The examination that you made extended over what years?
A. From 1876 to 1884.

9107 Q. It is proper to state the Municipal Company was organized in 1876 with a nominal capital of $500,000, and that subsequently its capital was increased in 1877, to $1,500,000; in 1879, to $2,000,000, and in 1880, to $3,000,000; those amounts being nominal share capital; please tell what the books you have examined show in respect to the payments of money touching this capitalization?
A. With regard to the first issue of $500,000 in 1876, on account of that there was $215,300 paid in cash, $100,000 on account of purchase of property, $150,000 for purchase of patents, and $34,700 given for salaries and providing for discounts on certain shares that

were sold below par; the next issue of $1,000,000, in 1877, was subscribed for $800,000 in cash, and $200,000 paid for patents; the next issue of $500,000 in 1879, was wholly subscribed for in cash; the next issue, in 1880, was subscribed for in cash; the last issue of $1,000,000, however, the cash received therefor includes the $350,000 for the 3,500 shares allotted to the Bayard estate for the 3,500 shares referred to in Mr. Cutting's testimony yesterday.

Q. If in fact it was paid you mean?

A. It is assumed to be cash, for the reason it was passed through the cash book.

Q. You find that amount drawn out also?

A. Yes, sir.

Q. And concurrently with the payment in?

A. Yes, sir.

Q. And paid out to whom?

A. It was paid out in two amounts; $300,000 in settlement of a claim for damages in a suit by the Knickerbocker Company against the Municipal Company, which was charged to profit and loss account of the Municipal Company, and another check for $50,000 purporting to have been given for the purchase by the Municipal Company of 15,000 shares of the Knickerbocker Gas-light Com-
9108 pany; the latter amount was charged to a special account and stands to the debits of that account at the company's expense November 11, 1884.

Q What is that account?

A. It is called Knickerbocker Gas-light Company's stock.

Q. What became of that item of $50,000 in the adjustment account between the Consolidated and the Municipal?

A. That was incorporated with the value of property and brought into account with the Consolidated Company as against the stock that they received from the Consolidated Company.

Q. Please state to the committee the total amount of moneys paid by way of dividends or distribution to the stockholders of the Municipal Company, during the period covered by your examination of these books, and as shown by these books up to the time of the consolidation?

A. The profit and loss account of the Municipal and Knickerbocker, of the former company from 1875 to 1884, and of the latter company from 1880 to 1884, shows that they paid away on their capital, as before stated, the sum of $2,806,192.50 for dividends in that period.

Q. If you can give the items of that $2,000,000 by years it would be desirable?

A. In the year 1879, $90,000; the year 1880, $353,742.50; 1881, $712,450; 1882, $600,000; 1883, $600,000; 1884, $450,000; that makes the total above referred to.

Q. What else have the stockholders of the Municipal Company received first in money and then in stock of the Consolidated?

A. They received $6,600,000 of stock in the Consolidated Company.

Q. What else in money did they receive by way of distribution?

A. Twenty-six and a half per cent. per share, called distribution of the assets since November, 1884, amounting to $795,000.

9109 Q. That is included in your first item?

A. No, sir; they have received the sum of $795,000, twenty- and a half per cent., $26.50 per share for the distribution of the assets collected other than those transferred to the Consolidated Company.

Q. So that in round figures it is a correct statement, is it not, to say that the stockholders of the Municipal Company have received in money upon their shares $3,600,000 in addition to the shares of the Consolidated stock apportioned among them?

A. Certainly, that is so.

Q. Now, referring to the items upon which this Consolidated stock was based did you make an examination of what is shown by the books respecting the cost of the following items; the plant, real estate, street mains, valves, etc.?

A. I did.

Q. In a schedule found at page 30 of Appendix "D" in the report of the last Senate Committee, appeared the details of values of the constituent companies at the time of consolidation?

A. Yes, sir.

Q. For the purpose of making a comparison between those values and what you may have found shown by the books touching the items which are enumerated, did you make an examination?

A. I have.

Q. State its results in respect to each of the items?

A. The balance as standing, the amount standing as representing the cost of the various investments of the Municipal Company, are as follows:

Q. Lump each item?

A. The outlay of the Municipal Company for the various amounts represented in the table on page 30, before referred to, amount in the aggregate to $4,092,347.86, and the sum of the valuation

9110 on page 30, including the franchise, is $5,100,000, therefore making an appreciation on that account of $1,007,652.14.

Q. Is not that exclusive of any Knickerbocker items except expenditures made by the Municipal on the Knickerbocker properties after 1880?

A. It is quite independent of any expenditures on the other company.

Q. State what appears by the books of the Municipal Company—its total expenditures upon the Knickerbocker property since 1880 that appear to have been?

A. On account of works, mains and sundries the Municipal Company have expended on the Knickerbocker $810,481.15.

Q. And is that item included in the aggregate of items you have previously just given?

A. No, it is not.

Q. Hence, the total expenditures as shown by the books for those items you have designated, namely, for construction, plant, and other properties, is what figure, the two together?

A. Four million nine hundred and two thousand eight hundred and twenty-nine dollars and one cent, the total expenditures on the two companies' works.

Q. So far as the books exhibit is there any other item to be added to that amount in order to represent the actual aggregate expenditures upon the Municipal property or Knickerbocker properties that enter into the consolidation?

A. No, there is nothing further.

(By the CHAIRMAN:)

Q. Do you mean to say that the entire sum put into the Municipal Company amounts to $4,902,829.01?

A. That is the two together; the amount of money used by the Municipal in the increase of their works and the addition of the Knickerbocker.

Q. Do you mean to say that the property that the Muni-
9111 cipal held on the day next prior to consolidation, including the Knickerbocker, which had previously been merged in the Municipal, cost the sum last mentioned, and no more, as shown by the books?

A. As shown by the books that was the amount of money they expended, but I take it that the value of the Knickerbocker property, whatever that may be, when it was transferred, is not incorporated there.

Q. Does that include the $1,200,000 indebtedness of the Knickerbocker that was assumed?

A. Oh, no, not that at all.

Q. Can you state how much the Municipal Company had expended in any way upon the works and property which it had at the time of consolidation, which would include of course the Knickerbocker works?

A. Yes, sir; the Municipal expended on their own $4,092,347.86 and upon the Knickerbocker Company's works and plant $810,-481.15.

Q. Then what had their total property cost them?

A. Without the value of the Knickerbocker Company $4,900,000 in round numbers.

Q. The whole property that the Municipal had at the time of consolidation cost them how much?

A. Four million nine hundred and two thousand and odd dollars.

Q. How much had the Municipal Company put into the property which it had at the time of the consolidation?

A. Four million nine hundred and two thousand dollars.

Q. What has the Municipal Company, the stockholders as such, taken out of the concern that includes the twenty-six and a half per cent. which was paid after the consolidation but paid from assets of the Municipal remaining in their hands at the time of consolidation and not transferred?

A. In cash $3,601,000.

9112 Q. Have they taken out any thing else?

A. No.

Q. What do they claim to have left in their possession as their own property?

A. The stock, $6,600,000, the total amount $10,201,192.50 and something over yet to come.

Q. What?

A. It depends upon how much the remaining assets are worth, perhaps $30,000 or $40,000.

(By the CHAIRMAN:)

Q. Then since and including the year 1876 they have put in a little less than $5,000,000?

A. A little less than $3,000,000; their capital stock is only $3,000,000.

(By the CHAIRMAN:)

Q. How much did the stockholders put into this concern irrespective of what they got from the public?

A. Nothing; but there was a surplus left after the payment of dividends; they paid for stock $3,000,000, assuming it was paid all in cash.

Q. That is all they have ever put in?

A. Yes, sir.

Q. They have actually taken out of the Consolidated how much?

A. Three million six hundred and one thousand dollars.

Q. And have got left in Consolidated stock how much?

A. Six million six hundred thousand dollars, assuming the Consolidated stock to be worth par.

Q. How much did the shareholders put into the concern and pay for their stock?

A. The capital stock of the Municipal Company was paid in in cash by sundry shareholders, $2,165,000; $350,000 by the Bayard estate in the manner as before explained; $100,000 of stock was given for the original purchase of the property; $350,000 given for the purchase of patents; $8,900 given in payment of salaries; $25,800 was the discount on stock sold at different rates below par.

9113 Q. Is that all that the stockholders of the Municipal Company ever put into the concern?

A. Yes, sir; that's all they ever put into the concern.

Q. And have drawn out upwards of $6,000,000, and have got their $3,000,000 of stock besides?

A. Certainly; in point of fact the actual cash that went into the company's coffers from the stockholders for the use of the company was $2,165,000.

Q. In point of fact the expenditures in and for property to the amount you have already stated were made from ordinary receipts, so far as they are in excess of that sum, $2,165,000.

A. So far as they are in excess.

Q. The construction of the works and the acquisition of properties has been paid by the current receipts?

A. Yes, sir; out of profits made and reserved beyond the dividends made which were at the end of the trading nearly two and a half million dollars.

Q. Explain the whole thing, that last item you gave, so that it shall appear more clearly what you mean?

A. The balance left from the profits of the company after paying the dividends is in round figures $2,500,000, November 11, 1884; that amount added to $3,000,000 of capital has provided the sum for the outlay on works and plant, $4,900,000, and $800,000 in round figures divided among the stockholders since November 11, 1884; and the balance represents future assets to be collected, and other small amounts standing as assets on their books, and various expenses and costs of liquidation in suit; now we must go further than that; there are some liabilities outstanding of the Municipal Company, $328,000.

Q. Were they not assumed by the Consolidated?

A. Yes, sir; but they were incorporated in the Municipal accounts.

9114 (By the CHAIRMAN:)

Q. Is there any thing of that evidence which modifies or varies the statement already made by you?

A. Yes, sir; there is a sum of $328,000 owing by the Municipal Company for outstanding bonds, the proceeds of which have been used in the general construction and working of the company's business, as before stated, and that is really an addition to the capital and surplus, and went to provide an additional working capital.

Q. That indebtedness appears to have been assumed by the Consolidated Company, does it not, and to have been included in the $6,600,000 of stock apportioned to the Municipal?

A. No, it is not included; it is deducted before the $6,600,000 was given; the total amount of the plant of the two companies was $8,100,000, and there was $1,465,000 deducted from that for debts, and the Municipal Company got $6,600,000 worth of stock for the total value of all their property, less the indebtedness.

(By the CHAIRMAN:)

Q. Which indebtedness the Consolidated Company assumed?

A. Yes, sir, and assumed so much of the stock when it was due.

(By the CHAIRMAN:)

Q. I don't see how that modifies your previous statement as to what the stockholders of the Municipal Company put into the concern and what they took out of it, and what is now left in their hands of the stock of the Consolidated Company assigned to them in the act of consolidation?

A. That statement goes to confirm my previous reports upon that, that the Municipal Company's stockholders received $6,600,000, and that they have received as the value of their assets, less their liabilities.

Q. You mean it is the net value?

9115 A. Yes; the course they pursued was $1,800,000, as they appraised them, and they had $1,500,000 liabilities; the Consolidated say then "we will assume them but deduct it."

(By the CHAIRMAN:)

Q. Then the answer is that it does not modify it but rather confirms it?

A. Yes, sir.

Q. Is this testimony which you are now delivering the result of recent examinations, or had you made any such examination when you testified last March?

A. No, I had not; the result of this examination is the result of my labors within the last few days.

Q. Will you now please prepare appropriate tables or digests of the figures showing the results that you have just testified to, so that the Committee shall append it, if they choose, to your testimony?

A. Yes, sir, I will.

Q. Is there any item of depreciation written off in arriving at those results?

A. Nothing very substantial; the depreciation was generally charged to repairs, which was only $27,000 written off the depreciation.

Q. So that in arriving at those results there is no more depreciation allowed in the books than about that sum?

A. No, under that heading, that is all; in my account last March the Municipal Gas-light Company wrote off for repairs a depreciation, $235,000, page 346.

Q. Did you investigate that item?

A. Yes, sir, and ascertained that they had spent that amount of money for repairs; it is an equivalent to writing off the amount for depreciation and spending the amount as they required it; I will correct my figures; the depreciation written off is $53,000 and not $27,000; I took the wrong figures.

(By the CHAIRMAN:)

Q. The cost of repairs then has been made from time to
9116 time and came out of the earnings of the company?

A. Certainly.

Q. The money with which bonds have been paid for came out of what?

A. The earnings of the company, and I presume a part of the surplus.

Q. So that the dividends paid have been over and above all those expenditures and earnings?

A. Yes, sir; the dividends paid have been the cash that they have had left that they didn't want for any other purpose.

Recess until 4 o'clock p. m.

FIFTH AVENUE HOTEL, NEW YORK,
December 2, 1885—4 p. m.

(Hearing resumed.)

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the Committee.

THOMAS RUTTER, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are the president of the Harlem Gas-light Company?

A. Yes, sir.

Q. And you are also a director in the Consolidated Gas-light Company?

A. Yes, sir.

Q. Were you present the other day when a dividend was declared?

A. I was.

Q. Was any financial statement submitted to you?

A. There was not, except a verbal statement which was made by the treasurer.

9117 Q. Was the vote to declare a divident unanimous?

A. It was.

Q. What directors were absent, if any?

A. Mr. Pyne; he was the chairman of the finance committee; Mr. Zollikoffer was absent—I am not sure about that.

Q. When did you first hear consolidation considered and valuations referred to for that purpose?

A. I don't remember exactly when that occurred; the question of consolidation was discussed three or four years before it actually took place.

Q. What is your best recollection as to the time that valuations were first considered?

A. I should say six or seven months before the time of consolidation the committee were at work; I am not positive as to that.

Q. Were you on the sub-committee which was appointed by the pooling committee to consider consolidation?

A. No, sir.

Q. Who represented your company on that sub-committee?

A. Mr. Moss.

Q. What, if any thing, did you, as president of the Harlem Company, have to do in respect to the Harlem property entering into that consolidation?

A. Nothing; as a member of the committee Mr. Moss occasionally consulted with me as to values, etc.

Q. When did you first arrive at values in the Harlem Company for the purpose of negotiating for consolidation?

A. I could not tell you the date.

Q. Was it in 1883?

A. I can't tell you whether it was in 1883 or 1884.

Q. Were there any papers or memoranda in existence respecting values other than the schedules which formed the final basis of the consolidation agreement?

A. Not that I know of.

9118 Q. When were the schedules prepared?

A. They were being prepared at the time or immediately after the committee was appointed of one from each company.

Q. It was appointed some time in 1883; in December, according to the pooling minutes?

A. Eighteen hundred and eighty-three or eighteen hundred and eighty-four; I could not tell you the date.

Q. The sub-committee which you referred to, the committee which had power to call in legal counsel?

A. Yes, sir.

Q. Your schedules of appraisements were prepared immediately after that committee was formed?

A. Yes, sir, after that committee was formed.

Q Were there at that time valuations affixed to those schedules by any of the Harlem directors?

A. No, sir; it was left entirely in the hands of that committee.

Q. To anybody else but Moss on that committee?

A. Except occasionally when he consulted with me about prices.

Q. So that we understand you as testifying that the Harlem Company prepared schedules of its property but did not affix to those schedules valuations?

A. We made an inventory of our property.

Q. Did you put valuations to it?

A. Those values were placed there by this committee of which Moss was a member; I presume they did; I don't know from actual knowledge.

Q. Did those values differ from the values affixed upon the schedules finally?

A. I can't give you a different answer from that; I was not at the meeting; there were some changes made no doubt.

9119 Q. Can you say whether there was any substantial change in the values affixed to your properties at the time of consolidation from what those values were as originally represented by the Harlem Company?

A. The figures were cut down; I know that.

Q. Are those original schedules in existence?

A. I could not say; I don't think they are; I don't know whether they are or not.

Q. When did you last see them and with whom?

A. I don't know as I ever saw them; that is, the schedules made by the committee; I would like to correct that; I saw them but when I could not say; of course I saw those figures when they were submitted to me by Moss.

Q. Were you not a member of the pooling committee?

A. No, sir, not at all.

Q. Well, the original schedules that were appraised and were submitted to the Consolidated Company, and that formed the immedi-

ate basis of consolidation, are supposed to be now before the committee, and marked exhibits "F, J, S, G." I suppose that is it; is that it? (Paper handed to witness.)

A. That is it, because it is in Mr. Moss's handwriting.

Q. Were those the schedules which formed the final basis?

A. I don't know; it does not seem to cover the ground fully.

Q. What else was prepared?

A. I don't know; there evidently was one.

Q. Look at this and see if this is not it? (Paper handed to witness.)

A. This is another of the same character; it does not cover the ground fully; it is a detailed statement of the different values of the property we had; Mr. Moss can give you all that information correctly.

(Witness refers to paper marked Inventory of the Harlem
9120 Gas-light Company, November 10, 1884)

Q. Was there not submitted to the Consolidated Company an appraisement of all your property?

A. I think there was.

Q. Who appraised it?

A. We made an appraisement, at least Mr. Moss did, and made his statement, which was referred to the committee, and then a valuation was made upon his figures; there were appraisers employed for the purpose; their names I can't give you; I don't know; these figures were revised when they were presented to the committee; they were cut down when they thought the figures were too high.

Q. There is a total of $2,500,000; is not that the whole of it?

A. You ask me about the figures, which amount to $1,300,000.

(Witness refers to a paper marked "Exhibit F.")

Q. That schedule covers the Harlem property, does it not?

A. Yes, sir.

Q. Is not that the paper which formed the immediate basis of the consolidation agreement?

A. That did, I think.

Q. Was there any other property owned by the Harlem Company except as detailed in this schedule?

A. I think this covers the whole thing; there may have been another paper; I would not vouch for that.

Q. What you question is, whether there was any other property of the Harlem Company which is covered by that paper or in which it was recapitulated at the end?

A. I could not answer that except in this way, that I don't know.

(By the CHAIRMAN:)

Q. There was no other to your knowledge at all events?

A. I have an impression that there was another paper.

9121 Q. Then it seems there was another paper covering property, was there?

A. I don't remember any other paper, yet I have an impression

that there was another paper upon the same subject, but I am not positive about that.

Q. Of what importance is any other paper?

A. Except to get the valuations, to increase the values and bring them up to the point that we went into the consolidation; there is something in these figures I don't really understand.

(By the CHAIRMAN:)

Q. That creates an impression upon your mind that there is another paper?

A. Yes, sir.

Q. This paper recapitulates the valuations of mains, meters, services, works, real estate, etc., at $2,530,917.46; the total capitalization apportioned to the Harlem Company by the consolidation appears to have been $3,000,000?

A. Yes, sir; a little over, I think.

Q. The difference being about $469,000; can you state how that was arrived at?

A. I cannot.

Q. Have you no information whatever upon that subject?

A. No.

Q. Were you not consulted respecting it before you signed the consolidation agreement?

A. No, I don't recollect that I was; it was left entirely to the committee.

Q. Was there any meeting of the board of directors of the Harlem Company at which the matter was considered?

A. No, sir.

Q. Were you present at the meeting of the stockholders of the Harlem Company when that subject was voted upon?

A. Yes, sir, it was not discussed at all there.

Q. Was that vote chiefly by proxy?

A. Yes, sir; the vice-president held them and I held them.

Q. How many did you vote on?

A. I could not tell you.

9122 Q. Didn't you vote on two-thirds yourself?

A. I could not tell you the number.

Q. Didn't Moss and yourself substantially cover by your votes more than two-thirds of the proxies?

A. Moss did not vote; he had not the power to vote; it was Rodman and myself.

Q. Didn't the vote of yourself and Rodman cover more than two-thirds of the stockholders?

A. Yes, sir; I guess it did.

The CHAIRMAN: Strike out what refers to Moss's voting.

Q. Do you testify that the valuation of the Harlem properties was arrived at, so far as this difference of $469,000 was concerned, without any special consideration of that item?

A. No, I would not say that; I have no doubt it was considered, but not by me.

Q. You cannot explain that to the committee?

A. No, sir; had I been a member of the committee I might have been able to answer these questions.

Q. Was there any other property of the Harlem Company or assets of any kind whatever, that were not turned over to the Consolidated Company, or that were distributed among the stockholders of the Harlem Company after the agreement of consolidation; I will refresh your recollection by a paper which bears your signature?

A. I think every thing was turned over.

Q. Was it not paid by the Consolidated Company afterward?

A. I mean this, that we had uncollected bills, and we had stock on hand, coal, etc., which was all turned over by the gas company; the adjustment committee had that in charge.

Q. Didn't the Consolidated Company distribute those assets to the stockholders of the Harlem on account of the Harlem Company?

A. I think they did.

9123 Q. What was the total amount of assets so distributed?

A. I could not tell you.

Q. Does not that paper enable you to say?

A. This is a schedule rather of the indebtedness of the company, a balance due under contract to Rowland, a balance due on bonds, etc., and other indebtedness of the Harlem Gas-light Company.

Q. That paper does not enable you to state what the amount of payments were?

A. No, sir; this states what the company owed at that time and what was transferred to the Consolidated Company who took care of them.

Q. This statement is marked Exhibit I. Was the distribution to the stockholders of the Harlem that was made at or about the time of consolidation, or shortly after, made by the Harlem officers or the Consolidated Company on account of the Harlem in adjustment? What was the fact?

A. I don't recollect at this time how that was done.

Q. In substance do you know the percentage of distribution thus made?

A. No, sir; that is shown by the records.

Q. What?

A. The Harlem books will show.

Q. Whether those payments were made by the Consolidated or the Harlem?

A. I think that that payment was made by our company.

Q. Was any dividend made by the Consolidated to the Harlem stockholders?

A. There was a dividend of the reserved assets which was made by the Consolidated Company.

Q. Thirty-two thousand dollars?

A. Yes, sir; I don't recollect the percentage or the exact amount.

Q. In addition was there any other dividend about that time made by the Harlem Company?

A. A very small one.

Q. What period did it cover?

A. It happened to be left over.

9124 Q. When was that paid?

A. Shortly after the consolidation took place.

Q. You are aware, are you not, that legislation affecting the gas companies of the city of New York was proposed last winter?

A. I only know from what I saw in the papers; I have no other knowledge of it.

Q. No other knowledge than what you saw in the papers?

A. No, sir.

Q. Do you know what the provisions of the proposed bill were?

A. No, sir.

Q. Do you know any thing about it?

A. Absolutely nothing about it.

Q. And didn't down to the adjournment of the Legislature?

A. No, sir; the only knowledge I had was what I saw in the newspapers.

Q. From the papers did you know what the proposed legislation was?

A. No, I did not; I saw that the matter was talked of in the Legislature; that's all.

Q. You heard the matter was talked of and knew it was talked of?

A. In the newspapers.

Q. You knew nothing about it yourself; then of course you were neither friendly nor hostile to the legislation?

A. I took a neutral stand on that point.

Q. Entirely indifferent to the whole thing; then you could not give us your opinion as to the wisdom or unwisdom of the proposed legislation?

A. No, sir.

Q. And yet you are president of one of these constituent companies?

A. Yes, sir.

Q. And director of the Consolidated Company?

A. I had nothing to do with it whatever, that bill at the Legislature.

Q. In your opinion as a business man, experienced more or

9125 less in manufacturing and supplying gas, is the dividend a fair element in ascertaining and fixing the price at which it should be supplied to the public?

A. I think it is.

Q. Is there any fair reason in your opinion why that dividend should not be limited and thus the price of gas limited?

A. I don't think there is any fair reason for it—which I can give at least.

Q. What, if any, contracts existed of the Harlem Company, I mean at the time of the consolidation, that were assumed by the Consolidated Company?

A. There were contracts for coal and supplies generally, and also for the addition of our works, which were about completed at the time of consolidation.

Q. The contracts were with whom?

A. The contract for extending the works was with Mr. Rowland.

Q. With whom were the others?

A. The coal companies, the West Penn. Coal Company and the Westmoreland, and there was a company in Western Virginia, it is the Murphy's Run Company, contract for coal.

Q. What other contracts?

A. There may have been a few, but not great contracts.

Q. Were there any other contracts except for materials?

A. Not that I am aware of.

Q. Any for services outstanding?

A. Not that I am aware of.

Q. Were there any other contracts made?

A. No; in regard to contracts you mean people employed by the year?

Q. Yes, sir?

A. Mr. Moss was employed by the year as vice-president and manager; all those services ceased at the time we went into consolidation.

Q. Were not the contracts for salaries outstanding for a longer period?

A. No, sir.

9126 Q. Were there no contracts for salaries whatever that were assumed by the Consolidated?

A. Nothing but what I mention.

Q. Were there any made after the consolidation by the Consolidated?

A. They may have fixed salaries for the management of their offices; I don't know that.

Q. Don't you know of any salaries that were fixed or agreement made and approved by the Consolidated Company after the consolidation?

A. I think not.

Q. Don't you know of any with respect to any of the officers or employees or agents of the Harlem Company?

A. There were not.

Q. Don't you know the fact that there were such contracts in relation to the officers of the other constituent companies?

A. I have no data to form an opinion from.

Q. Did you ever hear that matter come before the board of directors of the Consolidated?

A. No; no recollection of it.

Q. Did you ever vote as a member of the board of directors upon any such contract?

A. There may have been a salary for some officer; I think there was; I can't recollect what it was now.

Q. Do you not know that there were some indebtednesses assumed at the time of consolidation and contracts of that character?

A. I think there were some contracts that were made by the other companies and assumed by the Consolidated Company; but there were none with reference to the Harlem.

Q. None whatever?

A. No, sir.

OSCAR ZOLLIKOFFER, being duly recalled, testified as follows:

9127 Examined by Mr. TREMAIN:

Q. When your examination was suspended you was asked to refresh your recollection by referring to your own memorandum or papers; now do you remember how early you submitted the memorandum of values of the properties of your company, for the purposes of consolidation?

A. October 17, 1883.

Q. Were not the values of the properties and of the other companies, at that time, submitted or considered?

A. They were not quite ready; we had many postponements; many times one was ready and the other was not ready; October, 1883, it was first reported to the board; there was a resolution whether we should consider it or not; I think it was in the beginning of July.

Q. When did you first know, if at any time, that legislation was necessary in order to effect consolidation?

A. I must say I am disappointed; I had a paper and I cannot find it; I don't trust to my memory entirely.

Q. Where is it; at home?

A. I think it is at home, or in my overcoat; I cannot find it.

Q. You can answer that question in the morning, and I will ask you another one on another subject; was the subject of values of the property of the Knickerbocker or Municipal Company, or either of them, considered at any of the meetings of the committee when you was present?

A. Yes, sir.

Q. What, if any thing, was said in your hearing in respect to those values?

A. A difference of opinion; some thought it was higher than it ought to be, and others thought it was not too high.

Q. You know the basis upon which it was valued finally?

A. It was more an agreement than any thing else.

9128 Q. Will you tell the Committee what was the basis by which the values of rights and franchises, so called, were arrived at?

A. I think more or less by the amount of sales of gas, by the quantity sold.

Q. Were you on the committee of appraisement?

A. No, sir.

Q. Did you personally have any thing to do with appraising any of the other properties except your own?

A. None, except our own; afterward in debate, naturally we came together; one thought this was too high, and the other thought to the contrary.

Q. Prior to the actual consolidation in November, 1884, were any steps taken to reduce the price of gas after the pool had been formed?

A. I don't think any steps were taken; but recommendations were made repeatedly.

Q. By whom?

A. Principally by myself.

Q. And who else?

A. I think the Manhattan was favorable to it too.

Q. As the result of investigation by the previous committee, legislation was proposed. Do you remember whether any officers or directors of the Consolidated Company expressed any opinions in respect to that proposed legislation?

A. I think it was spoken of repeatedly, but I don't know that a decided opinion was made.

Q. As an officer of the Consolidated Company at that time, and as president of the old Metropolitan Company, did you inform yourself as to what that proposed legislation was, so as to form an opinion as to its wisdom?

A. I read it all attentively as much as I could.

Q. Have you any opinion to express to this Committee as to the expediency of legislation, such as was then proposed?

9129 A. In respect to controlling the different gas-works, or in what respect?

Q. To such legislation as was proposed, founded on the principle of limiting the price of gas by restricting dividends?

A. Yes, sir; well, I read that too; but I think it works both ways; if a limit should be agreed upon, it ought also to be on a basis to secure protection to the parties as far as competition is concerned; it ought to be working both ways; a minimum ought to be fixed, as well as a maximum.

(By Senator ROBINSON:)

Q. Do you approve of legislation fixing the price of gas to a certain per cent. dividend on the capital actually invested?

A. I think always, in every thing, competition is the true thing; that brings it down to a level.

Q. But in competition, competitors can enter into a pool to keep the price up?

A. Yes; for a certain time, and competition can go against the pool, and be successful too.

Q. What are your views upon a legislative act which shall limit the price of gas to a certain per cent. dividend upon the actual capital invested in its production and distribution?

A. It would be beneficial to the stockholders, provided always a sufficient capital is allowed for making improvements, because they have always to be made.

Q. Assuming there should be a sufficient capital allowed for working capital and improvements, would you favor legislation that should regulate the price of gas upon a certain per cent. dividend of the capital actually invested for its production?

A. I have no objection, but I think if you have two companies adjoining to each other, they have one or the other the reputation of being the best; I am in favor of competition, and have always found it was the best in various kinds of business.

9130 Q. Assuming a fair protection, have you any opinion as to the wisdom of legislation that limits dividends on actual working capital?

A. In the gas business there are a great many chances, ups and downs; we are exposed to accidents which other companies are not; in any case we lose heavily; therefore I say a company of that kind ought to have a fair limit of capital, and fair allowance for working.

Q. Would you have the allowance made for working capital include sums to be used in extending and enlarging the works of the company?

A. Yes, a certain percentage would allow a regular increase in proportion to the demands for gas.

Q. You would increase the works of the company, the plant, out of the earnings of the company, rather than by the increase of the capital stock of the company?

A. Yes, sir, by the earnings; take our case for instance, a very poor company; at first everybody thought we must break, still it was economy and application at the proper time, and finally we succeeded.

Q. You are in favor of that system that will allow a fair dividend and sufficient working capital to keep the property in as good condition as when you took hold of it?

A. Yes, sir.

Q. You mean in the original capitalization to reserve sufficient capital to cover reasonable increase, and then keep the works in good running order from the business?

A. Yes, sir, and all the increase can be provided for.

Q. Would you enlarge and extend the works out of the earnings of the company, and not by the issue of new stock?

A. The business must increase naturally, and if in laying out $2,000,000 for half the city, for the whole city lay out $4,000,000; it is on that principle.

9131 Q. Where do the $2,000,000 come from, really?

A. To issue new stock; the earnings are sufficient if you have it above a certain limit, and if it is not sufficient, then to authorize an increase of capital.

Q. To extend the works either from the earnings of the company or additional capital?

A. Yes, sir.

Q. Do you think that the working capital of the company ought to be increased out of the earnings of the company, or out of the new capital, or both?

A. I think the stockholders, it ought to be left with them to increase according to the needs of the business.

Q. Increase what?

A. Increase the capital.

Q. Do you think the company ought to have the right to go on extending its works, and building new plant, and laying new mains, etc., out of the earnings of the company?

A. Yes, sir; out of the earnings, a part, if they have a surplus.

Q. Whether they should have the right to do that, the unlimited right to do it?

A. They should in my opinion; if business is good, capital will come; it will be offered at the lowest rate.

Q. And if they should enlarge their works?

A. I think after all it ought to be left to the company to manage its own business; I was never afraid to show any stockholder of our company any thing, but that they should always have the right to come in and see, and why should not the Legislature have the same right at any time; I have no objection to bringing it before the Legislature; I could have no objection whatever; certain parties in high standing ought to be appointed, say a committee of three people who are disinterested.

Q. In such a case as suggested to you, do you think that enlargement of capital for the purpose of enlarging the works, cov-
9132 ering more territory for instance, should be provided for by new capital subscribed and paid in, or profits on gas?

A. I would limit the profits of gas to a certain amount, to cover all expenses and everything, and then I would have no objection to increasing its capital according to its necessities, and it should be certainly paid in.

Q. Do you think it is an unreasonable exercise of legislative power to limit the dividends to the capital?

A. I don't think it is any thing wrong, but I say every thing ought to work to all sides favorably.

Q. Was there anything in your opinion substantially wrong or radically inexpedient in the bill proposed last winter by the Senate Committee?

A. I must say I don't recollect all the items of it; I will read it over, perhaps, to-night.

(By Senator ROBINSON:)

Q. You are speaking of a fair surplus working capital, and being allowed to charge enough for gas so as to keep the works improved; whether or not you think it is a fair dividend; that in 1876 a company put in $3,000,000, and from 1876 to 1884 they charged such a price on gas that their dividends amounted to $3,601,000; is that a fair price for gas?

A. I don't like to say it is or no; I think it was against policy.

Q. Was not the price of gas to allow such dividends for eight years upon that capital simply an outrage upon the consumer?

A. I think it was too much, and always expressed myself to that effect, but I don't want to have a fight with any one of them on that account.

Q. Whether or not a gas compa[illegible] so located that by a capital of $3,000,000 in 1876 they charged s[illegible] a price for gas, that in eight years they took out in dividends $3,601,000; has not the price
9133 of gas to these consumers been simply outrageous?

A. I know our company had no such profits on gas; we had nothing of the kind.

Q. You don't believe in legislation allowing such dividends on stock as that?

A. I don't think it should be allowed; it ought to be limited to an extent; I would make a pretty fair limit.

Q. After they have taken out $3,601,000 in dividends, is it a

fair appraisement to turn a property which costs but $3,000,000 over into a company at a valuation of $8,000,000 to pay upon that stock?

A. I don't like to –I don't know how they came to; perhaps they were over wise.

Q. If it was done, was it a fair appraisement in your opinion?

A. If it was done under fair rules; if a man has a chance to buy cheap property and afterward it becomes high, he should be allowed its full value; it is policy I say; these companies would have made more if they had kept their prices down; at the time when the appraisements were made they were in such a position that it had a good income, and therefore had a regular value.

Q. Having paid such a price for gas in eight years, they received in dividends $3,601,000; was the fact that they had paid such enormous dividends taken into account in appraising its value? Was it on that basis?

A. Well, if it had its value, I don't know what it hangs on, whether it was partly made in real estate or whether it was made from the gas profits; I don't know where these gains were made.

Q. On account of its large dividends, your idea is that legislation ought to be so as to allow the company to make a fair dividend upon the property and money actually invested, together with a reasonable amount for working capital?

9134 A. I think at the time, if this was left to the company as they were before the consolidation, it would be right and proper; but here is a property that had its value; each one of those companies at the time could have sold to other companies at its value.

Q. Was not a large element in that value made up of the fact that they had charged such prices for gas that they could make those enormous profits?

A. Certainly that was one of the things; but our people all knew, every one of us, if you will read the minutes of our executive committee, that in every meeting I made the proposition to reduce the price of gas for two years.

Q. Don't you know as a gas director that the value of these privileges comes from the fact that they have been for years charging such a price for gas as to make these enormous dividends?

A. Yes, sir; allow me to say this; that the gas companies were for years and years exposed to every thing, and if they had a good business one week, the next week they had a poor business.

Q. This price of gas was kept up by all the companies going into a pool to keep it up?

A. Yes, sir.

Q. In the city of New York was not the price of gas kept up through this pooling arrangement?

A. It is so throughout the country; it was a business that had its risks.

Q. Was not this price kept up by this pooling being kept up?

A. Yes, sir, here.

Q. As a result in part these large dividends took place?

A. Yes, sir.

Q. Can you name any other business as stable and solid in its risks?

A. I think the railroads are; if you let the gas companies alone they will come down.

9135 (By the CHAIRMAN:)

Q. Up in capital and down in rate per cent., is that the result in consolidation so far?

A. I don't speak of consolidation, I only speak of business in its actual ways.

Q. Do you think that the fact that unreasonable charges have been made by gas companies is a reason for increasing the capital stock on which the public is expected to pay such an income as will give them what you call a reasonable per cent. of profit on this new and increased capital?

A. I think that the property what was on hand in the several companies had actually its market value.

Q. If your company had not entered into the consolidation, and its capital had remained as it existed prior to the consolidation, in your opinion, could it have furnished gas to its consumers cheaper than is now furnished to the same consumers, by this so-called Consolidated Gas Company?

A. I think it might be a little cheaper to the consumer; of course I consider every additional office as more expense.

Q. Could it not have been furnished to the customers of the Metropolitan Company considerably cheaper than is now furnished; and you have paid ten per cent. dividend upon the old capital of the Metropolitan?

A. I suppose so.

(By the CHAIRMAN:)

Q. It is not unreasonable for a gas company to charge the public such a price for gas as will enable the company to receive an annual dividend of twenty per cent.?

A. I think it is; but still it depends on the solidity of the position of the gas company, whether it is for a short time, or whether it is permanent.

Q. If such profits were so unstable and uncertain as to make such a profit reasonable, then that must be taken into account in estimating the value of the property?

A. Yes, sir.

9136 Q. And would greatly reduce its value?

A. Yes, sir; if not guarded.

Q. You would not hardly expect such property, unstable as that, to be worth par?

A. No, sir; if unstable as that I would not consider it worth par.

Adjourned until December 3, 1885, 10 A. M.

FIFTH AVENUE HOTEL,
NEW YORK, *December* 3, 1885.

Met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the Committee.

JOHN P. HUGGINS, a witness called by the counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are a director in the Consolidated Company?
A. Yes, sir.
Q. Prior to that were you a director in the Metropolitan Company?
A. Yes, sir.
Q. How long have you been connected with the Metropolitan Company?
A. I can't say exactly; somewheres in the neighborhood of twenty-five or thirty years.
Q. Have you been interested in any other of the constituent companies?
A. Yes, sir; the Harlem, and I had a little in the Manhattan.
Q. You transferred it all into Consolidated stock?
A. Yes, sir.
Q. You continue to hold the same amount now?
A. I hold all of my own stock; I had two hundred shares which was in trust; every dollar of my own stock I hold.
9137 Q. Were you present at the last meeting of the board of directors?
A. No, sir, you had me here.
Q. Do you know anything about the proposition to declare a dividend at that meeting?
A. No, sir.
Q. Did you understand that was to be voted upon at that meeting?
A. No, sir, I did not know positively.
Q. Have you heard any thing about it?
A. Yes, sir.
Q. From whom?
A. We talked it over at the meeting of the finance committee.
Q. Who is "we"?
A. Myself, Mr. Gawtry, Mr. Pyne—Mr. Day was absent; we didn't recommend any dividend.
Q. When was that?
A. It was at a finance committee a week ago last Monday, I think.
Q. Why didn't you recommend any dividend?
A. The finance committee have never recommended a dividend; they examine the thing and refer the whole thing to the board of directors.

Q. Is it not a fact that you never made any report on the subject whatever to the board of directors?

A. I don't think we did.

Q. Is it not a fact that you didn't formally refer it to the board of directors?

A. I don't think we put it in writing; no, sir, we did not.

Q. Was there any difference of opinion in the finance committee as to whether the dividend of December should be declared or not?

A. I don't think there was any talk much about it; we merely took it up and wanted to know whether they would declare a dividend.

Q. Did they have any statement of the earnings before them?

A. Yes, sir.

Q. Any other statement except the balance sheet of October 31st?

A. I think not; we examined the bills, etc., and compared

9138 them with the book accounts.

Q. What has that got to do with the dividend?

A. Nothing, only to see whether we earned it or not; the finance committee is supposed to examine every thing.

Q. You did not, did you?

A. We spent a day and a half there.

Q. State specifically what books and papers you examined?

A. I did not myself; I had the list of bills and called them off; I examined no book myself; Mr. Pyne and others had the books.

Q. During the year has it been the custom to submit lists of all the bills to the finance committee?

A. Yes, sir.

Q. Who compared those lists of bills?

A. I don't know; the copy was before us and the bills all there; who the clerk was who wrote them up I never asked.

Q. Was it done under the direction of the secretary or treasurer?

A. I don't know; the secretary was there.

Q. The secretary had the list and had the bills?

A. Yes, sir; it was on loose paper or law paper, or something of that kind.

Q. Giving the names?

A. Yes, sir.

Q. And what they were for?

A. Yes, sir.

Q. Did you have such list before you in every meeting of the finance committee?

A. Yes, sir, all that I have ever been to; I have been absent most of the time in the country.

Q. Is there any book in which those lists appear?

A. Not to my knowledge.

Q. Were not those lists prepared every month?

A. I think so, every month.

Q. Were they known as monthly lists of bills?

A. Well, I suppose so; I took them to be such.

9139 Q. When was the first one, in January or earlier?

A. I was not here at the first meeting; I don't think I have

been to more than two or three finance committee meetings; the first was some time last summer, I think.

Q. Were such lists then presented?

A. The sheets of paper with memorandums upon them.

Q. Did the finance committee audit all these bills on those lists, or only a part of them?

A. These bills are mostly paid before they come to the finance committee; bills for labor and all that sort of thing have to be paid every week, I think.

Q. How about supplies?

A The same, I think.

Q. Including coal?

A. Yes, sir.

Q. Who are the parties of whom any coal has been purchased during this year?

A. I don't remember the names of those coal companies.

Q. At a uniform price?

A. Yes, sir; I don't remember the price now.

Q. Was it always uniform?

A. I think so, yes, sir.

Q. Had you any opinion yourself as to whether the dividend should or should not be declared?

A. Yes, sir.

Q. On what was your opinion based?

A. On the earnings.

Q. Where did you get your information?

A. From the balance sheet, or papers that were presented to us there.

Q. You have not stated that any paper was presented to you on that subject except the balance sheet of October 31st. You formed your opinion on that?

A. Yes, sir.

Q. What was your opinion?

A. That we could pay a dividend.

Q. To what amount?

A. Three or three and a half per cent.

9140 Q. Based on earnings?

A. Yes, sir.

Q. Are you not aware that that sheet exhibits earnings only of $400,000 during that six months?

A. I don't remember what the sheet shows.

Q. Have you any recollection about it?

A. No, sir; I did not charge my memory with it at all.

Q. And yet you based your judgment on that balance sheet?

A. Yes, sir; with some other things that Mr. Smith told us.

Q. What did he tell you?

A. I don't remember what he told us the earnings were.

Q. You cannot tell us anything more than you have on what you based your judgment that a dividend was proper?

A. No, sir.

Q. In order to pay a dividend of three and a half per cent. on

what did you found an opinion that it could be paid without intruding upon the working capital or borrowing funds?

A. I could not tell you what it was unless I could have papers to examine.

Q. Did Mr. Smith make any statement whatever in respect to earnings?

A. Yes, sir.

Q. In addition to the balance sheet which was before you?

A. I am not positive, but I think he did.

Q. And you have no recollection what that statement in substance was?

A. No, sir.

(By the CHAIRMAN:)

Q. He is not sure that there was any made?

A. I am not positive that there was.

Q. You were connected with the Metropolitan Company so long we should like to have your opinion as to advantages first to the public, the customers of the Metropolitan, and second to the shareholders of this consolidation; please tell what advantage, if there was any, ensuing to the customers of the Metropolitan Com-
9141 pany or calculated to follow as the result of consolidation?

A. We thought that the gas could be made cheaper if it was all under one head; we thought we could sell it cheaper.

Q. Was there any advantage to the shareholders?

A. We never thought it would be any advantage to the Metropolitan shareholders; that is, some of the directors did not; I did not for one.

Q. Was it the idea of consolidation if gas could be supplied cheaper to consumers that there should be any diminution in the advantages to the shareholders?

A. No, sir; I don't know; the most of our shareholders were in favor of consolidation; I don't know what their ideas were.

Q. You expected the same advantages as the other shareholders?

A. Well, I was in hopes to get the same advantages.

Q. The consolidation would not have been entered into by the shareholders of the Metropolitan except in that expectation?

A. No, sir; it would not have been entered into at all by me; I was opposed to consolidation, although the majority of them requested it and I went along with them.

Q. The stock of the Metropolitan appears to have been exchanged for stock of the Consolidated at 260?

A. About that.

Q. Was not that less than the debt?

A. No, that was the exact amount.

Q. For 100 of the Metropolitan you got 260 shares of the Consolidated stock?

A. Yes, sir.

Q. With Metropolitan stock at 260 and Consolidated stock at 84, which was the price when the exchange was actually effected, what was the advantage to your stockholders?

A. I could not see any; still they requested it and they got it.

Q. What was the last dividend declared by the Metropolitan?

9142 A. That I don't remember; that I would have to refer to the books for; I think five per cent.

Q. For what portion of the year?

A. I don't remember; the books will show.

Q. Don't you remember?

A. No, sir.

Q. If it was five per cent., was it for the whole or a part of the year?

A. A part; it strikes me it was for six months; the books show.

Q. Didn't you have regular times for declaring dividends?

A. We declared the dividends when we had the money; we used to declare it twice a year; some years we have not received a dividend.

Q. Will you say that your company has failed to declare a dividend in any year for the last thirty years?

A. Yes, sir.

Q. When?

A. In the early part of the company I held stock there for a long time before I ever got a dividend.

Q. How many years is it since you did not receive a dividend?

A. I could not say.

Q. In 1880 did you receive as shareholder of the Metropolitan a dividend of eighteen and seventy-eight one-hundredths per cent.?

A. I could not tell you without referring to the books.

Q. In 1883 did you receive twenty per cent.?

A. I could not tell you; I don't remember.

Q. Will you now say that you received less than that?

A. I could not tell you for my life what dividend I received in any one year.

Q. The books show you received twenty per cent.; if the books say a dividend of twenty per cent., that is correct?

A. Yes, sir.

Q. You would not be surprised if they showed that?

A. I would not.

Q. If the Metropolitan had sought to cheapen the price of gas they might have done it and thereby reduced their dividend

9143 far below twenty per cent. and yet have received a fair income from their investment, might they not?

A. That depends upon what you say is a fair income.

Q. Say yes or no to it?

A. It would reduce the dividend.

Q. If the Metropolitan had sought to cheapen the price of gas they might have done it and thereby reduced their dividend far below twenty per cent. and yet have received a fair income from their investment, might they not?

A. Not in my opinion.

Q. Then, in your judgment, the gas company ought to receive a dividend of twenty per cent.?

A. I think they had, with the risks they have to take.

Q. If the Consolidated chose such a rate to pay on their capitaliza-

tion, say a dividend of twenty per cent., what, in your opinion, would the price of gas come to?

A. I don't know.

Q. It would have to be increased very greatly above its present price, would it not?

A. I think it would.

Q. It would be more than double to pay twenty per cent.?

A. I should think so.

Q. Then the gas consumers would have to pay a great deal more than they are now paying to give the company a fair investment?

A. They would, to pay twenty per cent.

Q. Is it your idea when the Consolidated Company only pays seven per cent., it does not pay a fair return on their investment?

A. If they could get it every year, I would be satisfied with it.

Q. Your theory would be to increase the price of gas twenty per cent., so that the company could receive such a dividend on the stock?

A. No, sir.

Q. Is there any reason, in your opinion, why the large
9144 amount of property of the Consolidated Company should not be sold, and have so much of its capitalization reduced, and thus save dividend?

A. I never have given that a consideration; I don't know; if they could concentrate their works all in one place, as their works are now scattered as they are, it requires about all of them to do their business.

Q. In your opinion, as a director in the Metropolitan, could not the Metropolitan have furnished gas to its consumers cheaper to-day, without having entered into that consolidation, and yet have given a fair return on its stock?

A. No, sir; I think if the Consolidated is worked properly, and some of these works could be dispensed with, it could be made cheaper than with the individual gas companies, as is shown by the Harlem.

Q. Why should a dividend be paid on that property then from the price of gas?

A. We have the property, and it may be all necessary.

Q. If you could reduce the plant?

A. If we could concentrate it.

Q. That means reducing it?

A. If we could put it under one head.

Q. Would consolidation result in a reduction of the amount of plant required for the production and the distribution of gas?

A. If we could concentrate the works all in one place or two places they could be run for less money.

Q. Is it a matter of fact that consolidation will produce the legitimate result in reducing the amount of plant required for the manufacture and distribution of gas?

A. I think it will in time.

Q. Then would it not properly reduce the amount of capital to be employed in the business?

A. I don't know as it would.

Q. Is it not your opinion that it would?

A. No, sir.
9145 Q. You think it would not?
A. No, sir.
Q. Would the reduction of the plant cause an increase of the capital?
A. No, sir.
Q. You think it would not cause a reduction of the capital?
A. No, sir.
Q. As a matter of fact consolidation has resulted in more than doubling the capital, has it not?
A. Well, there is more capital.
Q. Is that right?
A. Yes, I think so.
Q. What was the objection, if any, that you have heard expressed to the proposed legislation recommended by the Senate Committee last year?
A. I heard no objections to it, sir.
Q. Don't you know there were objections expressed to that measure?
A. No, sir.
Q. Didn't you yourself ever make the remark that these interests had to be protected at Albany?
A. No, sir; I did not.
Q. Did you never hear of anybody say that the interests of the Consolidated Company had to be protected at Albany?
A. I heard Sherwood say so.
Q. Anybody besides Sherwood?
A. No, sir.
Q. Didn't you ever say to O'Connell that you had interests that you are accustomed to have protected at Albany?
A. No, sir; I don't know such a man.
Q Did you ever say to anybody that you had interests that were looked after at Albany?
A. No, sir.
Q. Do you know anything about it; did you ever hear anybody say any thing about protection of gas interests at Albany?
A. Yes, sir.
Q. Anybody besides Sherwood?
A. No, sir.

(By the CHAIRMAN:)

Q. Never heard the subject alluded to by anybody except him?
A. No, sir; I may have heard people talk around at the
9146 hotel; I have often heard people say to me "Go up to Albany with your boodle," that was a mere matter of joke; I don't suppose they seriously meant any thing of the kind, sir.
Q. That was not the way you were in the habit of doing it?
A. Not my way of doing business.
Q. Did you ever say to any of the stockholders that the company expected or its friends expected to send money to Albany every little while and expected that you would have to do so again?

A. I have no recollection of saying so; I don't know that there was any money sent to Albany.

Q. Whether you ever made such a statement to any stockholder?

A. No, sir; I have no such recollection that I ever did make any such remark; or of talking with a stockholder about it.

Q. I understand you to say that people occasionally spoke to you in a joking way about taking boodle up to Albany?

A. Yes, sir.

Q. For the purpose of bribing legislators?

A. I suppose so.

Q. Whether in your opinion it is a joking matter and whether you think the law is right that pronounces bribery a crime on the part of him who offers and him who takes it?

A. I do.

Q. Do you think it is a very serious crime?

A. I do.

Q. Do you regard it as a very serious crime and that the man who commits it commits a felony?

A. I do.

By Mr. TREMAIN:

Mr. James W. Smith, the treasurer of the Consolidated Company, produces to the chairman the original lists of shareholders of the constitutent companies, viz., of the New York, Manhattan, Metropolitan, Municipal, Knickerbocker and Harlem.

9147 JOHN H. MOSS, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You was an officer of the Harlem?

A. I was a manager and a director.

Q. You were in charge of the Harlem station?

A. Yes, sir.

Q. And in the employ of the Consolidated Company?

A. Yes, sir.

Q. That employment was arranged for at the time of the consolidation?

A. It was not; I have not received any special appointment; I have continued as I under-tand it.

Q. Did you have a contract with the Harlem?

A. No, sir.

Q. You are its practical manager at the works and of its business generally?

A. Of the office and of the distribution of gas.

Q. You continue to perform the same duties now that you did prior to the consolidation of the Harlem?

A. With the exception of the works I do; those having been discontinued, I have nothing to do with them.

Q. What date were those discontinued?

A. I think early in March last.

Q. Since that time have they produced any gas at all?
A. No, sir; a portion of the plant is now being used—the holders.
Q. The gas being brought there from where?
A. The Ninety-ninth street station.
Q. Is it the old Knickerbocker works?
A. Yes, sir.
Q. No other part of the plant is being used?
A. Well, we use the engine and boiler and some pumps that are requisite in keeping the tanks filled with water.

9148 Q. You use the mains and services of the old Knickerbocker?
A. Yes, sir.
Q. And meters?
A. Yes, sir.
Q. How long have you been connected with the Harlem?
A. Since the latter part of June, 1879.
Q. What was the condition of their works at that time?
A. Very dilapidated.
Q. Were they producing gas?
A. Yes, sir.
Q. About what quantity?
A. About five or six hundred thousand feet a day at that time; their capacity was one million feet a day.
Q. In their condition at that time, was that their actual capacity?
A. Yes, sir; they could not have produced any more at that time.
Q. When were they increased to a larger capacity?
A. There was a gradual increase; it was a matter of necessity; the growth of the district required a gradual increase.
Q. Have they bought any more lots?
A. Not since that date.
Q. The increase has taken place on the same lots?
A. Yes, sir.
Q. By construction of plants there?
A. Yes, sir.
Q. Have those lots been filled in?
A. The original property has been filled in east of First avenue.
Q. The expense of that filling in?
A. I had no connection with the company at the time they were filled in; they were filled in from First avenue east to the bulkhead, which is now about 100 feet east of the line of Avenue A; this is based upon my recollection of the formation of the country there, the marsh.
Q. Please state about the distance between First avenue and Avenue A?
A. Well, it is 650 feet about; it may vary a few feet; some of the blocks are longer than others.

9149 Q. These works the land extends from—give the outside boundaries?
A. Near Second avenue the line is shorter on One Hundred and Tenth street than it is on One Hundred and Eleventh; on One Hundred and Eleventh it is about two hundred feet east of Second avenue; on the south by One Hundred and Tenth street; on the west by

this gore line east of Second avenue; on the north by One Hundred and Eleventh street, and on the east by the East river; there is other property there, but none on the water.

Q. The other property is bounded how?

A. On the north by One Hundred and Eleventh street, with a gore line running through to One Hundred and Twelfth street; a frontage there of about seventeen feet, and another line running back that is within seventy-five feet of One Hundred and Eleventh street, and then east to First avenue. And another piece, the western boundary is First avenue, the north boundary 175 feet about north of One Hundred and Eleventh street, and that line extends about 110 feet, I think, into the block; then there is a frontage on One Hundred and Twelfth street of fifty feet, and the line on One Hundred and Eleventh street is, I should think, about 300 feet—I am not sure of that line. That is as near as I can recollect, a description of the property of the works.

Q. This part, the first described plot, east of First avenue, that was filled in, it was filled in some years ago?

A. Before I went there.

Q. Do you know who did that?

A. Not to my knowledge.

Q. You have lived in New York long enough to be familiar with that locality, and to know how it was done?

A. Yes, sir; my information is that it was filled in by the gas company.

9150 Q. Was it all done before you went there?

A. Yes, sir.

Q. In what part of the records of the company would be found that expense?

A. It would be found only in the expense account.

Q. It would in the pay-rolls?

A. Yes, sir; it would be in the pay-rolls.

Q. And in the purchase of animals and carts and implements?

A. Yes, sir.

Q. You would probably find it in the construction account, would you not?

A. No, it is not in construction account.

Q. Charged up to expense account?

A. Charged up to expense account.

Q. Building the docks the same?

A. Well, the building of the docks was a special bargain; I think that is in the construction account.

Q. Did you have any thing to do in keeping these accounts?

A. I did not.

Q. Who did?

A. Well, I was one of the committee on accounts while I was there; it was my business to examine the accounts, to see that every thing was correct.

Q. Who was president of the company when you first came there?

A. Mr. Wakeman.

Q. In the construction account were the mains, meters, services and pipes included?

A. Not all. In the construction account, after 1879, the mains were included, and I think a portion of the meters; the services were not, the meters were continued in the construction account.

Q. Did you have a general construction account?

A. There was one.

Q. Did that include all the work done on the property?

A. It depended upon the character of the work.

9151 Q. Such work as filling in the bulk-heads—was it charged to expense account?

A. Yes, sir.

Q. The buildings and retorts were charged to construction account?

A. The original were.

Q. Were any salaries placed in construction account?

A. I think they were all taken out.

Q. When were they taken out?

A. I am not sure of the year; I think it was in 1883.

Q. Do you remember being paid for patents and royalties?

A. Not since I have been there; there was a charge in there.

Q. Do you notice the charge of $12,450 in 1876 for patent?

A. Before I went there there had been some used, as for instance, manufacturing illuminating gas with oil or naphtha.

Q. Who first said any thing to you about valuing the property for consolidation?

A. I have no recollection who it was said it first to me. It fell to my lot from my position. I was a committee of one to represent the Harlem Company in carrying out the agreement.

Q. In 1884 you was on the pooling committee?

A. I was a member of the pooling committee.

Q. When did you first prepare a schedule of the properties of the Harlem, with a view to consolidation?

A. I think it was early in 1884.

Q. Wasn't it in 1883?

A. No, I think not.

Q. Do you remember a resolution of the pooling committee directing the employment of counsel to carry out the plan which was passed in December, 1883?

A. I have no special recollection of such a resolution.

Q. Do you not remember that the capital was a subject matter of consideration during the year 1883? I will refresh your recollection by referring you to an extract from the minutes.

9152 A. You are fixing the time; I cannot say. I say early in 1884 is the first I recollect.

Q. Pages 111 and 112 of the testimony of last year?

(Pages 111 and 112 of last year presented to witness.)

A. If that is a copy of the minutes, it was then, at that time it was done.

Q. Isn't it your best recollection that the subject of capital for the proposed consideration was considered in 1883?

A. That is a question that I do not know as I can answer yes or

no. The question of capital was considered at various times; that is all I can remember.

Q. These minutes would indicate it was considered prior to December, 1883?

A. Yes, sir.

Q. But I want the direct testimony whether it was or not?

A. I cannot fix the exact time when that subject was first considered.

Q. The witness says according to his best recollection the capital for the proposed consolidation was considered prior to December, 1883. Do you remember when the proposed capital of $45,000,000, was first suggested?

A. No, I do not.

Q. When you first prepared your schedules of the Harlem properties were values appended to those schedules?

A. Yes, sir.

Q. What did you do with those schedules, those originals?

A. I think they are in the possession of the Consolidated Gas Company.

Q. Are those the identical ones that were submitted finally when the agreements were signed?

A. That is the only schedule I made of it.

Q. Did you have more than one?

A. No, sir.

Q. Were the values alwa[illegible] the same from the time they were first fixed by you?

9153 A. From the time they were first approved of by the Committee.

Q. Are those values that you put down the actual values that were finally accepted?

A. Yes, sir, to the best of my recollection.

Q. Who, with you, appraised the property of the Harlem Company?

A. I had the advice of an engineer, Mr. Belmore, in ref[illegible]nce to the property; that was based upon the actual cost of the work which was then in construction and not yet completed.

Q. The valuation was made on the basis that it was to be completed?

A. Yes, sir.

Q. Were there no assets of the Harlem Company retained and distributed among its shareholders?

A. Yes, sir.

Q. To what extent?

A. I think it was one and a half per cent.

Q. On what?

A. The capital of two million dollars.

Q. Was this paper marked "Exhibit F" the schedule you alluded to?

A. Yes, sir.

Q. Was there any other?

A. No other except a copy of that which I have on file at the office.

Q. What was this prepared for, dated November 10, 1884 (paper presented witness)?

A. This is the adjustment of the cash assets after consolidation agreement; it left us the coal and gas on hand; the gas we had sold and various other things that could not enter into the original agreement; the schedule is what we call the cash assets.

Q. Were those cash assets turned over to the Consolidated Company?

A. Yes, sir.

Q. Stock was issued to them in addition to the stock apportioned at the rates named in the consolidation?

A. No, sir; the Consolidated Company paid cash for that property or its equivalent.

9154 Q. Then, in addition to the stock of the Consolidated Company, apportioned among the stock-holders of the Harlem Company, the Consolidated Company paid cash to the Harlem Company for distribution among the Harlem stockholders the sum shown here in this paper?

A. I couldn't tell without seeing it.

Q. We want to know what the amount was?

A. They assumed certain liabilities which were deducted from this, if I remember rightly.

Q. This paper may refresh your recollection?

A. That embraces the cash liabilities.

Q. And are they shown by this paper marked "Exhibit J"?

A. Yes, this shows what the Harlem Gas-light Company owed payable in cash at the time.

Q. That paper, marked "Exhibit J," showing the statement of indebtedness of the Harlem Company, exhibits, does it not, the amount of indebtedness that was assumed by the Consolidated Company to be set over against the cash assets shown by this inventory, which foots up $162,126.24?

A. Yes, sir.

Q. So that setting off the indebtedness shown by "Exhibit J," amounting to $86,379.65, there must appear that there has been paid by the Consolidated Company in cash for distribution among the Harlem stockholders the sum of $75,746.59, is that correct?

A. The question is not correct; it was not paid over for that purpose.

Q. If that is not correct, state what the fact is in respect to it?

A. It was paid over, for it was owing the Harlem Company for cash assets transferred to them, and not for distribution among the stockholders.

Q. Is it not the fact that that sum of $75,746.59 was paid over by the Consolidated Company to the Harlem Company, in

9155 addition to the stock that was distributed to the shareholders of the Harlem Company, at the rate of one hundred and forty-two shares of the Consolidated for one hundred shares of the Harlem?

A. To the best of my recollection, yes.

Q. Have those accounts been finally settled between the Harlem and the Consolidated Company?

A. As far as I know, they have; the payments were to be made almost immediately; the Consolidated made some of the payments for us.

Q. That did not affect the transaction?

A. Not at all; it was equivalent to paying the money over to us, if they paid our debts.

Q. Were you interested in any other company except the Harlem?

A. No, sir.

Q. Do you remember what the stock of the Harlem was worth at the time of consolidation or in the summer of 1884?

A. I heard of some being sold at 130.

Q. With stock of the Harlem Company at 130, and exchangeable, as it was exchanged for stock of the Consolidated Company at the rate of 142 shares of the Consolidated stock for 100 shares of the Harlem stock, and with the price of Consolidated stock as it was some time after the exchange, at about eighty-four, what was the advantage, if any, to the shareholders, in that transaction, in view of an arithmetical calculation showing the apparent loss of over $2,000?

A. There would be none; there would be an apparent loss of that.

Q. In what was the expected advantage to the shareholders of the Harlem Company in this achievement?

A. The expected advantage was to make the stock of more permanent value than the Harlem Gas-light Company's stock had been.

Q. Do you think that has been done?

A. I do.

9156 Q. In that respect, you think it has been advantageous?

A. I do, to the Harlem Gas-light Company.

Q. Does not that advantage depend upon the liability of the Consolidated Company to pay a dividend of say seven per cent. upon its stock as now issued?

A. Well, the answer to that question would be yes, although it was not at the time—the question was not raised in the Harlem Company at all.

Q. Are you not aware that the ability of the Consolidated Company to pay seven per cent. on its present capitalization depends upon keeping the price of gas at something not less than its present figures?

A. At the present time.

Q. Were you present when the last dividend was declared?

A. I have nothing to do with the Consolidated Gas Company other than I have stated. If I may be allowed in reference to that question about the dividend, I would like to state that the Harlem Company could not make any dividend at all at 1.75; consequently their benefit is different from that of any other company.

Q. That is caused by the expensive system of distribution that that territory necessitates?

A. Yes, sir, and the necessity of lighting the city lamps which is one-third of the business.

Q. There was a great waste in lighting the city lamps?

A. Yes, sir; there is an extraordinary leakage occasioned by the

new streets and building new buildings with the connection of the street sewers undermining our mains. Filling in breaks them off.

Q. For the $2,000,000 of capital stock of the Harlem Company, there was allowed $2,840,000 par value shares of the Consolidated Company?

A. Yes, sir.

9157 Q. Who appraised the real estate of the Harlem?

A. That was done between myself and the vice-president.

Q. Mr. Rodman and yourself?

A. Yes, sir; the values were based upon the price asked for certain property in our neighborhood at that time.

Q. Were you aware at the time of the cost of that real estate to the Harlem Company?

A. Well, no, I have never figured up the cost.

Q. You was aware that all expenses of taxes and assessments were charged to expense account, were you not?

A. Yes.

Q. They were all paid from earnings?

A. Yes, sir; they were paid from earnings.

Q. It is observed that the books of the company show the cost of the real estate to have been $159,000 in round figures and that expenses of taxes, assessments, etc., were paid as you state?

A. Yes, sir.

Q. Your valuation seems to have placed the real estate at $704,000.

A. Yes, sir; that covers quite a number of years, and great changes in property and in the valuation of property in that neighborhood.

Q. With that exception, is there any other substantial item in the appraisement of the properties of the Harlem Company in excess of the cost of such property as it stands upon the books of the company?

A. I think not; it was not intended to be. I have an impression that a portion of the plant is valued less than it cost.

Q. It ought to be?

A. I think not as long as it is maintained in working order.

Q. It is maintained in working order by adding to it from time to time?

A. Not that I refer to.

Q. Yearly expense?

A. Yearly expense to preserve it, but not added to it. The holders are in good condition, just as good as new.

9158 Q. All the plant, as a matter of fact, it has required a yearly expenditure?

A. Precisely.

Q. Is there any fair depreciation to be written off, year by year, in estimating profits?

A. I think not.

Q. Why not?

A. I am speaking in reference now to our company, that the repairs were made in the expense account; the maintenance of work.

Q. The reason you think there should be no depreciation written off is because it has kept up the repairs?

A. Yes, sir.

Q. Does that amount to the same thing?
A. It is equivalent to it.
Q. In any case, the expenditure is written off as it is made?
A. Yes, sir; and charged as an expense.
Q. What is, in your experience, a fair average of depreciation?
A. I could not say, because the expense varied with various years; my experience is too short to tell; the works have been brought up from one million cubic feet to two million since I have been there, and the greater part of that expense has been charged to expense account.
Q. Assuming the works to be in fair running order, I understand, it costs some amount to keep them so?
A. Certainly.
Q. What would be a fair average per year, in a series of years, per cent.?
A. I could not tell that.
Q. As a man of experience in gas manufacture, would you not say that some per cent. should do?
A. Not if it was carried on as we carry on ours; for we charge them all to expense account, as we go along.
Q. If you should do that, do you not think that the amount of expense during a given time, would, in due season, equal the original cost?
A. Yes, sir; but in one instance you take the expense out
9159 of the earnings, and in the other you would be knocking it off the value of the property.
Q. You are engaged in increasing your capacity all the time?
A. Yes, sir.
Q. And that is the reason you do not feel like expressing your opinion?
A. I never figured it up; I could not give an opinion without having made a calculation.
Q. Don't you know about what percentage of expense has attended the maintenance of your works?
A. No, I don't.
Q. Did you receive any grants from the Sinking Fund Commissioners of the city for land under water?
A. I could not tell you, the property was all acquired before I was there; I understand there was a purchase of certain rights; I think there was a deed showing that.
Q. That would appear in the cost of real estate on the books?
A. It ought to.
Q. That grant was for one dollar from the city, wasn't it?
A. I don't know.
Q. Do you know of any contracts whatever, that the Harlem Company had, at the time of consolidation, with the city?
A. Contract for lighting the city lamps; that is the only one I recall.
Q. What other special privileges, if any, did the Harlem Company then enjoy?
A. Well, I don't know that they enjoyed that much as a privilege;

but they had the privilege of furnishing the city with gas when they wanted it.

Q. What other, if any?

A. That is all, except the right to do business in the city.

Q. That is to say, they had only such rights as the Legislature gave it?

A. Such as were conveyed in their charter; they had no special rights.

Q. Do you know how this item, $469,000, in rights and
9160 franchise of the Harlem Company was arrived at?

A. It was upon the assumed valuation of all the rights and franchises of the company; and the right to sell gas in the city.

Q. How was that parcel *or* apportioned to the Harlem?

A. Because of their right to sell gas to the city.

Q. Their proportion of the difference between the total valuation of the properties of all the companies and the proportion of capitalization?

A. Less a certain amount reserved for working capital.

Q. And that was apportioned to the Harlem Company, according to the amount of gas sold by them for a year or two previous?

A. The sales of a certain year was taken as a basis.

Q. From October, 1882, to 1883?

A. October, 1882, to October, 1883.

Q. During the years 1878, 1879 and 1880 was the Harlem Company subject to competition?

A. It was; the opposition did not begin until 1879.

Q. Then what was it?

A. The Knickerbocker Company began to make gas in that district and lay its mains in a portion of that same territory, and the price of gas was put down in 1878 first, and we had to put it lower; the competition caused it; we sold it as low as 125 to some parties and to 225 after the pool was made.

Q. You paid a dividend in 1882?

A. No, sir, not in 1882.

Q. The books show it?

A. Then we paid it in 1882 and 1883 if the books show it.

Q. They do; the pooling operation in 1880 resulted in increasing the price of gas in the city of New York?

A. Yes, sir; until that price was put up the Harlem Gas Light Company did not pay its expenses.

9161 (By the CHAIRMAN:)

Q. The pooling operation was entered into with a view to ultimate consolidation, was it not?

A. Yes, sir.

Q. In order to render the combination more permanent and effective—is that correct, more stable and effective?

A. I presume that was the reason.

Q. How did it happen that you did not certify, with your co-appraisers, the values of the Harlem properties; I find no certificate among the papers?

A. Well, I don't know; perhaps it was an inadvertence; there is a certificate on the cash assets.

Q. With the others?

A. I don't know.

Q. You say the Knickerbocker Company interfered with you by its competition in 1879?

A. Yes, sir.

Q. Do you not think that if the Knickerbocker had continued from that time on an active competitor instead of becoming absorbed by the Municipal, as it was absorbed and the pooling combination formed, that the price of gas to consumers would have been below its present figure?

A. I do not.

Q. Why not?

A. I am answering now for our district; I cannot say for anybody else.

Q. What territory do your mains cover?

A. North of Seventy-ninth street, from there to King's bridge; not all of the territory is piped.

Q. How much is not piped?

A. I think very nearly one-half; the streets are not opened yet; six to seven miles of mains we are laying every year, we are laying nearly one mile a month since the first of May.

Q. Are half of the streets that are opened piped?

A. Nearly all the streets except those that have been opened for the last year or two.

Q. All that has been done from earnings?

A. No, sir, that has been done from capital stock.

9162 Q. Do you know how much cash capital was paid in?

A. No, I could not answer that question; I presume a greater part of it is cash capital.

Q. Do you know how much money was received for bonds?

A. The books say $170,000.

Q. Was all the money that the books show to have been received for bonds actually received?

A. I think the books show that.

Q. Was that during your management?

A. No, sir, before; I think the books show that the money was actually received from the bonds.

Q. All those bonds held by one person?

A. No, sir.

Q. Do you know who held them?

A. Held among various parties.

Q. The company paid interest on these bonds up to the time of consolidation?

A. Yes, sir.

Q. And charged that to expense account?

A. Yes, sir.

Q. And the consolidation has since taken them up?

A. Yes, sir.

Q. They had reserved stock enough to do that?

A. Yes, sir.

Q. Do you know who had the sale of that stock thus reserved for that purpose?

A. The Consolidated Gas Company.

Q. Do you know to whom that stock was sold?

A. No, sir; I do not know what it was sold.

Q. You know nothing more about the payments of the capital and its expenditure except as the books show?

A. That is all.

Q. And the expenditure for mains, construction and plant and other outlays were made from the sources of capital stock or from loans or from earnings?

A. Yes, sir; only three sources.

JAMES W. SMITH, being duly recalled, testified as follows:

9163 Examined by Mr. TREMAIN:

Q. It has been testified here that at the meeting of the directors of the Consolidated Company, on the 25th of November, a dividend was declared upon your statement that the company had earned it; you made an oral statement to the board of directors upon that occasion. What did you say?

A. I did to that effect. I said that the earnings of the company would warrant a dividend of three and a half per cent. payable on the 15th of December, which was six months from the last dividend.

Q. What else did you say upon that subject?

A. I think that was all, sir.

Q. Did you make any statement of figures whatever?

A. No, sir.

Q. On what did you base your statement?

A. Upon my knowledge of the business.

Q. I call your attention to the balance sheet dated October 31, 1885, and to the appearances thereby indicated that during the period from June 1st since the payment of the last dividend the earnings appear to have been $426,094.87, and that the amount paid in satisfaction of the former dividend appears to have been $1,240,000. Was anything said on either of those items at that meeting by anybody?

A. No, sir.

Q. In view of the fact that it takes over a million of dollars to pay such a dividend of three and a half per cent., and that the earnings up to October 31st appear to have been only $426,094.87, how was the dividend from earnings?

A. At the time you speak of, starting from the earnings, there was a surplus of earnings represented to the credit of profit and loss.

Q. That amount appears on this balance sheet to have been $594,539.08?

A. Yes, sir.

9164 Q. Even considering that amount thus carried over those six months as earnings, the total would be $1,020,632.95, which is less than the amount required to pay the last dividend,

which was at the same rate; explain, then, how it was that the company had earned a dividend?

A. Because the balance sheet, which you have mentioned as of October 31st, showed the earnings of the company up to the 20th of October only, and in addition to which they show the total expenditures to which could be fairly added the total amount of expenses of all kinds, of material and everything, between the 20th of October and the 31st of October, because they are charged up as against the cost of gas production and distribution, thus leaving the unindexed gas sold between the 20th of October and the 31st of October as the total profit, as against which there is no charge to be made; in addition to which the amount of profit during the heaviest portion of the year, when our heaviest business is being done, from the 1st of November to the 24th of November inclusive; and, in addition to which, the amount of profit during the period between the 24th of November and the 15th of December, which is six months' dividend at the end of the year; all of which led me to believe, and which I know, amounts to a considerable in excess of the dividends to be declared.

Q. That is, those several items that you have just enumerated were estimated by you as capable of admitting a dividend based on estimated profit, provided that dividends should not be paid upon the 15th of December—is that what you mean?

A. As far as it goes; I had within my absolute knowledge that the earnings on the 24th of November exceeded the sum required to pay three and a half per cent. dividend.

9165 Q. In that estimate how much did it exceed?

A. Up to what point?

Q. The date of the declaration.

A. About $315,000.

Q. When was it expected that such a sum would be realized—this excess?

A. What sum?

Q. The sum necessary to pay.

A. It had been already realized, as I stated, at that time, or nearly so. It would be realized long before the payment of the dividend.

Q. Not more than a few days before, would it?

A. I think so; yes, sir, probably not realized.

Q. In that estimate that you have just given, how much, if any, is allowed for depreciation?

A. The entire depreciation during that time.

Q. You mean to say all that you have actually expended to keep the works up?

A. Yes, sir; that is the amount of depreciation.

Q. But nothing else?

A. Nothing else.

Q. Are you not aware that there was not thus written off for depreciation and repairs from June 30th, to October 31st, any larger sum than $110,000?

A. If that appears to be the amount on the balance sheet, I was aware of it.

Q. It appears on this balance sheet that there was such deprecia-

tion between November 11, 1884, and June 30, 1885, of $216,000; and from June 30, 1885, to October 31, 1885, $110,000, making a total of $326,000 for that appearing. Is it a fact that no farther or other sum, in your judgment, in the conduct of the business is necessary to be expended during the ensuing year than another $326,000?

A. I think that might safely be taken as a basis of judgment; it might be more and it might be less, for the sum required.

Q. In your opinion, is that a proper allowance for depre-
9166 ciation and repairs on a gas plant, costing or valued at $12,000,000?

A. I think I should estimate it more to be on the safe side if I was required to estimate it.

Recess until 3 o'clock.

THURSDAY, 3 P. M.

Hearing resumed.

J. YALDEN, being recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. You have had some experience, have you not, in the matter of accounts and arriving at what are, in fact, profits and losses and capital as shown by accounts?

A. I have.

Q. Please state whether you have had experience, and if so, of what character in relation to the proper charges to be made by way of expense or towards depreciation of capital invested in a plant, in a working concern, and whether your experience is of a character to enable you to form an opinion as to what are proper items of expense, or what is a proper amount of depreciation, if any, to be accorded to capital invested in a plant, for the purpose of producing and supplying gas?

A. Well, in the case of a gas company generally, gas companies, as a rule, are so large that it is not always necessary or advisable with regard to the question of writing off an amount for depreciation, if more than that depreciation is equivalent to the average life of the plant; and if the average amount of expense required to repair the plant is equivalent to such depreciation each year, and is charged to expense account, there is no object in charging a stipulated sum to expense for depreciation but in the case of a company where the wear and tear is not evenly distributed yearly, it is proper that
9167 an amount should be reserved by writing against expenses equivalent to the average wear and tear and the amount expended for repairs, and permanent expense should be charged against it; for if there is any balance in one year, of course, it will be expended the next or the year after; for instance, if the average wear and tear is twelve and a half per cent., and if less amount than that is expended in any year, it is bound to be expended in the subsequent year or years, and at the end of the term, say eight years, being twelve and a half per cent., it will be found that the amount expended for repairs, etc., making the works as good as new, will be equal to the amount of their original cost.

Q. That is, assuming eight years to be the life of a plant?
A. Yes, sir.

(By Senator ROBINSON:)

Q. You say twelve and a half per cent.?
A. I think if the works are substantially put up, twelve and a half to fifteen per cent. should be a fair depreciation.
Q. What have you found to have been the practice in these respects in general, in the accounts of the several gas companies now under investigation; I am asking for the character of the accounts which you have been examining in these companies?
A. In years gone by my memory serves me that my former statement of twelve and one-half to fifteen per cent. is a fair depreciation for a gas plant; but if you will look at my statement made last March, on page 58, you will notice that the seven companies expended for repairs to works and depreciation, in the year 1883, the sum of $740,683.26, and that in proportion to the cost of the plant, the actual cost, I mean, is about twelve and a-half per cent., or a little over.

9168 Q. You mean that that figure is about twelve and a-half per cent. of the cost of the plant?
A. To those seven companies, yes.
Q. That is to say, as found upon the books, in making the examination of those seven companies, concerning the business of one year, 1883, you found such an allowance?
A. Yes, sir, in all for the seven companies. I will demonstrate it by this Manhattan Company.

(By the CHAIRMAN:)

Q. The cost of repairs in any year, for one company, would not give any sufficient basis on which to form any calculation, would it?
A. Yes, sir; one gas plant wears out just as much as another.
Q. But not at some periods as much as others in the same plant; you would not have to repair as much the first year as the tenth?
A. No, sir; I have incorporated the seven companies. It would not be fair to take one company as against one plant.
Q. If you take seven companies at different times, your idea is it furnishes something?
A. Yes, sir; I will farther demonstrate it by pointing out to you with the Manhattan Company's plant in the ten years ending 1884, there was expended $1,626,247.56 for repairs to the works and depreciation. Now, the cost of the plant of the Manhattan Company upon which they have spent over $1,600,000, in ten years, was about $2,400,000.
Q. You think that illustrates what you were just stating?
A. When you come to consider the cost of meters I must correct that testimony. In this depreciation account, in lieu of one million six hundred and odd thousand dollars written off for the Manhattan, it should be in round figures $2,030,000, as against a plant costing $2,400,000.

9169 Q. Thus illustrating that in less than ten years a plant costs its value over again?

A. Yes, sir, in less than ten years.

Q. Now, in respect to this matter of expense or depreciation, tell the committee whether there is any recognized standard of principle by which such matters are conceded regular in professional circles?

A. Yes, sir, in this way; in the depreciation of the plant; in factories and manufacturing business generally, the calculation is invariably made upon the life of the plant, and the way that accounts of that nature are generally treated is to credit by charging the profit and loss such an amount as is equivalent to the amount standing to the debit or the cost of such plant; it would be in this way: that if the life of the plant is ten years, and it was stated it cost $200,000, the expense would be charged with $20,000, and reduce the cost of the plant on their books to $180,000; and it would follow on the next year the addition in the nature of a permanent improvement; and then at the subsequent year the ten per cent. of the balance then standing to the debit of the account would be written off and what remained would be the fair average value of the worth of the plant.

Q. Indicate to the committee some standard literature, if any there be, that establishes the principles you have stated?

A. There is a small book called "The Depreciation of Factories and their Values," by Matthewson, which treats very fully of the depreciation of factories and machinery and refers to gas companies.

Q. Do you know what the custom is in respect to the certification of capital, or certification for dividends in the companies that are engaged in supplying the city of London with gas?

A. Yes, sir.

9170 Q. Do they follow these principles?

A. Yes, sir.

Q. On such registered certification?

A. They do.

Q. The uses in that respect with regard to the capital and dividends?

A. It is regulated by law to the amount of what they are to spend in the formation of their companies; the plant, etc.; and no capital can be increased except by cash subscription. Before authority is given to increase that capital evidence must be shown that it is necessary to increase the plant and the business; and as to dividends, they are not allowed to be paid unless they are absolutely earned.

Q. In determining whether they are earned or not, is an account taken of the depreciation of the property?

A. Yes.

Q. How is that depreciation reckoned?

A. The depreciation is taken and written upon the principle I have before related.

Q. Is that ascertained and approved by an officer or officers charged with that duty?

A. Yes, sir; it is.

Q. State what the usage is in that respect under the law for the regulation of gas companies as conducted in the city of London, having special reference to the certification of capital and of dividends?

A. The certification for capital in this way; an increase of capital being applied for, it can only be done under an act of Parliament, and the committee on the bill must be satisfied that such a capital is required, and is necessary, and when it is granted the published balance sheets that are certified to must show conclusively that the money has been actually spent in the way that permission was given; the amounts are published half-yearly, and after being made up they are certified to by the president of the company and other
3171 responsible officers and the engineers; and lastly by the accountants who are the auditors, that the dividend has been fairly earned, and is proper to be paid.

Q. Firms are established for such service?

A. Yes, sir; there are recognized firms; the persons making these audits are the public accountants who are chartered by the government and belong to the Institute of Accountants in England.

Q. Then the law provides for the increase of capital both as to when it is necessary and proper, and as to the amount and as to its expenditure?

A. Yes, sir.

Q. And as to dividends, the law defines the basis on which it is to be declared?

A. Yes, sir.

Q. Which basis puts a limit upon it practically?

A. Certainly.

Q. Does that have any practical effect to prevent the watering of stock?

A. Certainly it does.

Q. Does it secure an actual capital as a basis upon which dividends can be declared?

A. Certainly, that was the intention of the act.

Q. So that the law puts a limitation upon the capital, its amount and upon the dividend, how declared and its amount?

A. With regard to the first three points, it does; and in the case of gas companies, it does; the gas company's stockholders, they are to have a dividend of ten per cent., a fixed dividend.

Q. Does that system protect the consumers against unreasonable and exorbitant charges?

A. Yes, sir.

Q. Is it your observation that it accomplishes the proposed end? Have you the means of knowing about that?

A. Yes, sir; I have been through it years ago; I remember the time that gas in London, before this consolidation took place,
3172 was something double the price it is to-day; before the consolidation of the companies in London took place, before this system obtained.

Q. This governmental supervision has, in effect, reduced the cost of gas very greatly?

A. Yes.

Q. It gives a reasonable profit upon a stable basis?

A. Yes.

Q. It makes profits both reasonable and stable?

A. Yes, certainly.

Q. You formerly lived on the other side, and did for many years?

A. Yes, sir.

Q. Have the several companies in London a limited territory of operation?

A. Yes, sir.

Q. A limited portion of the city?

A. Yes, there are only three of them in London.

Q. Each company secured in its own territory?

A. Yes; no two companies can lay pipes in the same streets, unless there is absolute demand for them.

Q. So that the effect of this governmental regulation, which has proved a security of operation, coincident with the consolidation thereby established, has been to reduce the profits of gas about forty per cent.?

A. Forty to forty-five per cent., and it is beneficial alike to stockholders as well as the consumers.

Q. Do you know what the usage naturally established is in respect to distributing dividends on capital, whether the distribution is made on all the capital that may be authorized, irrespective of whether it is in part raised or not, or whether the dividends are limited to the capital as actually raised and invested in property?

A. The formation of these companies is generally by a stock capital with borrowing powers, which means, that as against so much stock capital they can issue so many bonds at the cheapest rate of
9173 interest they can obtain money for; in the year 1883 the three companies of London had raised upon bonds about eight and a half million dollars, about forty per cent. of their total capital employed, which was subject to a certain rate of interest, less than what the stock of a shareholder received, which was a fixed charge, of course, against the property of the company—really a mortgage against the property of the company.

Q. It did not swell the capital at all?

A. No; it was capital raised by loans.

Q. The dividends are based upon capital?

A. Yes, sir; the ten per cent.

Q. The ordinary capital as used, is exclusive of these bonds?

A. Money derived from them; the operation of that is to reduce the price of gas; supposing the whole of the amount was subscribed for, the consumers would have to pay more for their gas if the whole capital employed was of stock capital at ten per cent., than they would naturally have to do if half the working capital is stock at ten per cent., and the other half loaned capital bearing four per cent. interest.

Q. I would like to know how these bonds were discharged, whether out of earnings?

A. No; they are renewed again; they are generally sold at a premium, and in one case here, where the bonds sold at a rate of interest of four to seven per cent., they realized a premium of about $860,000, which the law compels to be spent in building the works and plant.

Q. Does this power of affecting loans on bonds result in reducing the amount of stock capital in works on which stock capital the dividend is based?

A. It does not result in reducing the amount of capital, used in building the works, but it operates in reducing the interest paid on the whole of the capital.

9174 Q. With this loaning power, can they have a smaller stock capital than they can have without it?

A. Yes, sir.

Q. Does this power of affecting loans on bonds result in reducing the amount of stock capital in works on which stock capital the dividend is based?

A. Certainly.

Q. Now, have you made an examination of the balance sheet of October 31 of the Consolidated Company and of the balance sheet immediately preceding the first dividend of that company, with a view of ascertaining what, in fact, are the profits of that company during its first year of operation?

A. Yes, sir; I have examined the balance sheet to the 31st of October last.

Q. It has been stated here to-day by the treasurer of that company that the figures as they appear on those balance sheets, in his opinion, as reported to the board of directors there was earned a seven per cent. dividend on the capital of the Consolidated Company so far as its stock has been issued up to December, 1885; what is your opinion on that subject from an examination of those sheets?

A. Well, upon paper, I think upon examination of the books, as these papers state it, I think the seven per cent. has been earned; but there is this question in my mind, whether an amount charged off for repairs has any thing at all to do about the average depreciation of the plant.

—. What is the amount charged off for depreciation and repairs?

A. Three hundred and twenty-six thousand dollars to October 31; $216,000 for the first seven and one-half, and $110,000 for the last four months.

Q. Have they written off and made allowance for a sufficient amount of depreciation?

A. No, in my own opinion, they have not.

9175 Q. What per cent. have they written off—you have stated it should be from twelve and a half to fifteen per cent.?

A. Well, for the period, which is eleven and a half months, two and two-thirds per cent. on the value of their plant, as it stands in the Consolidated Company's books, according to their own appraisement; that is not the cost according to their appraisement of the values; they have depreciated instead of appreciated, only spent for the first eleven and a half months about two and two-thirds per cent.

Q. If that is a correct appreciation, don't you think that plant must be much less than twelve million?

A. If they are right, I am wrong; that gives the life of the plant forty years.

Q. Have you any doubt of their having got the appraisal of the property too high, or their depreciation too small; it is one or the other?

A. Certainly, they have one too high or the other too low; even at this cost, that amount of money is not a fair depreciation.

Q. You have ascertained from the books the actual cost of that plant?

A. Yes, in every company; look at page 58 and you will see.

Q. What have you to say in respect to that depreciation of $326,000, in comparison with the depreciation that appears by the books of the same constituent companies for the year 1883 to have been, in total, $740,683?

A. It does not show the same appreciation, on comparison.

Q. State what it did show?

A. The year 1883 by the books of the companies, it cost the seven companies for repairs, $740,683, and the same companies incorporated under the consolidation company in the year 1884 have apparently spent only $326,000; but some allowance must be made in these figures for one or two of the works that are shut up,
9176 and then it will even show a very large difference.

Q. Would it be any more than one-half of the actual depreciation, making that allowance for the year 1883?

A. No.

Q. It would be less than half?

A. Yes, I think it would.

Q. According to the balance sheet of October 31, 1885, is it not true that up to the dates therein expressed, the dividend of three and a half per cent., the dividend since June, had not been earned?

A. Certainly, if you consider this depreciation to be a fair charge, as I consider it should be.

Q. Your answers, as last above given, are based upon the trial balance dated October 31, 1885?

A. Yes, sir; they are.

Q. Before passing to another topic, I wish to recur a moment to an item in the capitalization of the Municipal alluded to in your testimony yesterday. Is it not the fact that of the increased capital of the Municipal from $2,000,000 to $3,000,000 there was issued stock of the par value of $350,000, namely 3,500 shares for which, in fact, no money was paid to the Municipal Company?

A. In fact, there was not. The Municipal Company paid $300,000 to the Bayard family for damages and $50,000 for the purchase of the Knickerbocker stock, while concurrent with it came back the same amount from the Bayard estate to the company for subscription to 3,500 shares.

Q. So that it is not the fact to state that $1,000,000 of that capital thus increased was paid up?

A. No, sir; it never enriched the coffers of the Municipal Company in any way.

Q. In fact, did it not deplete the Municipal Company to the extent of 3,500 shares?

A. Certainly it decreased their assets taking out of their
9177 surplus capital charged to profit and loss and they assumed a liability to the stockholders for it in return.

Q. So that while apparently in some of the books there was an increase of capital and of cash and an issue of stock represented, yet, in fact, there was an actual loss of money, was there not, from the Municipal Company, as the result of that transaction, of precisely $350,000.

A. No, there was no loss of money; the transaction had the effect of creating additional capital at their own expense.

Q. There was a loss of 3,500 shares and the assumption of the debt?

A. Yes, the Municipal Company paid for it in the shape of these damages in this action.

Q. Was that, in effect, an increase of the stock out of the proceeds of the earnings of the company?

A. Certainly; the depletion of the company's assets at the expense of increasing the liability of the stock holders.

Q. It increased the capital?

A. Yes, sir.

Q. Without increasing its assets?

A. It depleted the assets.

Q. So that, in effect, it was a depletion of the assets, and increase of the dividend capital?

A. Yes, it was taken out of their surplus and put into their capital stock; it was to the benefit of parties who took the 3,500 shares.

Q. The consumers paid for that capital?

A. Yes, they paid for it in damages.

Q. The consumers paid for that capital?

A. That was the effect of it.

The following is an abstract of the claim upon which this pay-
ment appears to have been based according to the papers al-
9178 ready produced in evidence by Mr. Day, viz.: "Summons and complaint in this suit in Supreme Court by the Knickerbocker Company against the Municipal Company; summons dated August 23, 1879, and the answer served in October of that year."

Mr. TREMAIN: The counsel for the committee claims that upon the papers it does not appear there was any justifiable claim of any merit upon which the damages of $300,000 could in any point of view have been fairly awarded.

NEW YORK, *December* 12, 1885.

Under a resolution of the Committee at its last session, Senator Murphy was appointed a sub-committee to take testimony during the recess of the Committee, which adjourned to the call of the chair.

The sub-committee, consisting of Senator Murphy, convened at parlor D R, Fifth Avenue Hotel, New York city.

H. E. Tremain present as counsel for the Committee.

THOMAS K. LEES, a witness, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. Where do you reside?
A. I reside at 67 Pineapple street, Brooklyn.
Q. And your present occupation?
A. I am vice-president of the Consolidated Gas Company.
Q. Prior to that time you were president of the New York Gaslight Company?
A. Yes, sir.
Q. Is your place of business at the office of the Consolidated Company in Irving place?
A. Yes, sir.
9179 Q. Are you there every day?
A. Most every day.
Q. Were you at the meeting of the board of directors on the 25th of November?
A. Yes, sir.
Q. And were you at the office the ensuing week?
A. Not all of it; no, sir.
Q. When did you receive the dispatch that your attendance was desired here?
A. I never have received any dispatch until I got the subpœna yesterday.
Q. Did you not know that your attendance was desired?
A. I did not know it.
Q. Were you not told in your office that word had been left for you at your office?
A. No, sir.
Q. You were a member of the pooling committee, were you not?
A. Yes, sir.
Q. And you were examined before the Senate Committee last year?
A. Yes, sir.
Q. You were not examined concerning the items of valuations in the capital of the Consolidated Company last year?
A. I don't remember what I was examined upon.
Q. Do you remember seeing the bill that was proposed by the Committee last spring?
A. I saw the bill; yes, sir.
Q. Did you have some conversation with your fellow directors, or any of them, about that bill?
A. Nothing special, that I remember.
Q. Well, did you have any conversation with them about that bill?
A. I could not say that I did or did not; it was a year ago; I have conversed on various subjects, every day almost; I can't remember them; it is very probable I did have.
Q. Did you express any opinion in respect to that bill?
A. I cannot tell you whether I had a conversation; I don't know whether I did or not.

9180 Q. When did the New York company first propose any list or schedule of its properties, with a view to consolidation?

A. I couldn't tell when it was; I don't know.

Q. When did you first do that?

A. I can't tell you what I did two years ago, or one year ago; it was some time prior to the consolidation; that is about all I can say.

Q. More than a year prior, was it not?

A. I would not say that it was; I don't know.

Q. Do you not remember that some memoranda of such property was prepared during the pooling committee?

A. No, I do not; I have no recollection of any thing being presented at the pooling committee on that subject.

Q. Were you not a member of the sub-committee of the pooling committee to consider that subject?

A. I don't know but I was; I don't remember a sub-committee on that subject; there may have been one; I cannot tell; I kept no memoranda of any thing.

Q. Is there anywhere in existence to-day any paper whatever, or book, containing lists of schedules of some or of all of the properties of the New York Gas-light Company, which was prepared by any of its officers or clerks or by any one else to your knowledge during the years 1880 and 1885?

A. A schedule of last year, 1884, on which the consolidation was perfected, I think is on file somewhere; I don't know where.

Q. Is that the only one you know of?

A. That is the only one I know of.

Q. Were there no papers on which that was prepared or based?

A. Memorandums, possibly.

Q. Whose memoranda?

A. Anybody's belonging to the committee; they made their own memorandums; papers laid on the table, and every member made figures.

9181 Q. Indicate any one of such memoranda relating to the New York properties?

A. I don't know of any existing.

Q. Do you mean to testify that any papers from which the schedules that were finally filed, as you narrate, were prepared, are not now in existence; is that your testimony?

A. I don't know of any.

Q. Have they been destroyed?

A. Not recently; if they ever existed, they were never perfected; like all memorandums, they were probably torn up and thrown into the waste basket, when they became useless.

Q. Is that your best recollection in respect to any memoranda of any kind on which those schedules of the New York properties were based?

A. I don't know of any memorandums on which they were based.

Q. Who first prepared, or caused to be prepared the schedule you speak of in respect to the properties of the New York Company?

A. I can't say; it is possible I did.

Q. Don't you know as a fact that it was prepared under your direction?

A. It is very possible; I don't know it as a fact.

Q. What clerk prepared it?

A. I can't tell you that any one prepared it; I may have prepared it myself; I don't know anything about it.

Q. Don't you remember that you prepared it yourself?

A. I think it is very possible that I presented a blank schedule, and when it became a part of the general schedule, the blank was of no use and was destroyed, so far as I know.

Q. Where did the material come from to enter into that schedule, where did you get it?

A. From the books of the company, digging it out—from the valuations; the books show, or at least I suppose that they do;

9182 I have not seen the books within two years; I don't know anything about the contents of them, except a vague recollection; I should suppose, naturally, I would go to the books to get the base.

Q. Who was the chief book-keeper of the New York Company during 1883 and 1884?

A. Mr. Clark.

Q. What is his first name?

A. William J.

Q. Where is his place of business?

A. Number 157 Hester street.

Q. He is there every day, isn't he?

A. I presume he is.

Q. Isn't he under your orders?

A. No, sir; not under my orders.

Q. Hasn't he charge of that station?

A. No, sir; not specially; I have an oversight over it as I have over all of them.

Q. Are you not under contract with the Consolidated Company?

A. Contract for what?

Q. Any contract with the Consolidated Company?

A. Of the New York Company?

Q. Are you not under any contract?

A. Me, personally?

Q. Yes?

A. Yes, I have had a contract—not with the Consolidated; I had a contract with the New York Company.

Q. In writing?

A. No.

Q. By resolution of the board?

A. By resolution of the board.

Q. The substance of which was what?

A. That I should receive a salary of $10,000 a year for ten years.

Q. That resolution was passed in the fall of 1884, was it not?

A. Yes, sir, the fall of 1884.

Q. And that obligation was assumed by the Consolidated, was it not?

A. Yes, sir.

9183 Q. You are, therefore, under contract with the Consolidated, are you not?

A. You have got the facts.

Q. It is true that that obligation still exists by the consolidation?
A. Yes, sir; they assumed all the contracts of the New York Company.
Q. And you have not canceled that obligation?
A. No, sir.

By Senator MURPHY:

Q. In other words, you are still under contract with the New York Company, and because of the consolidation of the New York Company with the other, you were transferred as a portion of the stock; that is it?
A. Yes, sir.

Mr. TREMAIN: Yes, but the Consolidated Company is under an obligation to pay him $10,000 a year for ten years because of adopting the obligation of the resolution of the board of the New York Company.
Senator MURPHY: He became a portion of the property of the New York Company?
The WITNESS: Yes, one of the chattels.

By Mr. TREMAIN:

Q. Do you remember the date of that resolution?
A. No, I do not.

By Senator MURPHY:

Q. What were the conditions of your transfer to the Consolidated Company?
A. My personal transfer?
Q. Yes.
A. No conditions at all; all there was about it; by resolution of the board of directors of the New York Gas-light Company I was continued at a salary of $10,000 a year for ten years.
Q. For what purpose?
A. The consideration of twenty odd years of service—the company going out of existence at that time.

9184 By Mr. TREMAIN:

Q. Who is the manager of the New York branch of the Consolidated?
A. It has no manager.
Q. Who attends to the business of the Hester street office, at its head?
A. Mr. Doane.
Q. The full name?
A. George W. Doane.
Q. He was secretary of the New York Company?
A. He was treasurer of the New York Company.
Q. What was the date of the resolution of the New York Company?
A. I couldn't tell you, as I said before.
Q. Wasn't it in October, 1884?

A. I couldn't tell you whether it was September or October.

Q. Will you please get the resolution and send a copy of it here to put in your testimony?

A. I can get it.

Q. Did Mr. Doane prepare any schedule of the properties of the New York Company?

A. It is possible he may have done so.

Q. Don't you know whether he did or not?

A. I don't know whether he did or not.

Q. That there may be no mistake about your testimony, do I understand you to mean that, to the best of your recollection, there is no memoranda or paper of any kind whatever except in the regular books of account of the New York Company, showing any of the items of its properties set forth in the schedules on file with the Consolidated Company and utilized as its basis in part of capitalization or consolidation?

A. I don't know whether there is or not; I haven't any; that is all I can say to that.

Q. Is it the best of your recollection that no such papers were ever made or do now exist?

A. I don't know of any existing; I don't know that any
9185 were ever made; I think it is likely they were made and destroyed at the time they became a part of the consolidation; that would be the natural course.

Q. In which of the constituent companies were you a stockholder?

A. In the New York.

Q. Only?

A. Only.

Q. Holding how many of its shares?

A. I don't remember how many I did hold at that time; some thing over one hundred, but I don't remember how many.

Q. You received Consolidated stock for it?

A. Yes, sir.

Q. Still hold it?

A. Still hold it.

Q. Do you hold any more than you then held?

A. Yes, sir; I have bought some since.

Q. Whom did you buy it of?

A. I cannot tell you; I bought it in the street; I bought it of any one that came along with it; I don't remember whom I bought it of.

Q. Did you buy it before April, 1885?

A. That I don't know; I don't know whether I did or not; I think likely I bought some before and some since.

Q. Did you ever sell any?

A. I never sell.

Q. Did you appraise yourself, any of the property of the New York Company in 1884?

A. I think I did.

Q. Who with you appraised any of it?

A. I couldn't tell; I made inquiries of one and another as to the values of some of the properties; not only my own but others.

Q. Did you appraise any of the real estate?

A. I made inquiries in regard to the value of real estate.

Q. Who appraised your plant if anybody?

A. I think Mr. Rowland appraised it; that is my recollection; either he did, or was consulted in regard to it.

9186 Q. Did you request him so to do?

A. Yes, I requested assistance from his office in regard to fixing the values of some of the mechanical parts of it.

Q. Didn't you request Mr. Rowland to make an appraisement of the plant of the New York Company?

A. It is very probable I did.

Q. Did you ever request him?

A. I can't say whether I requested him or whether I asked him to help me; I think he did make the appraisement; I am under the impression that he did make one.

Q. Who made the appraisement of your real estate?

A. I have already testified that I made pretty much all that myself, with such information as I could get.

Q. Who was it conducted the business in respect to fixing all the valuations that were fixed of the New York properties at the time of the consolidation; was it not yourself?

A. In regard to the values of all the New York property?

Q. Yes.

A. It is very probable I did.

Q. Isn't it your best recollection that the business was conducted under your direction?

A. Naturally it would be, as president of the company.

Q. And as a fact it was, wasn't it?

A. I don't know of anybody interfering with me in regard to it; at the same time I cannot state as a fact what occurred a year and a half ago; my memory is not good on time.

Q. Then your recollection is that this occurred a year and a half ago at least?

A. At least that; still it may have been a year and a half; it is now December; the consolidation was effected in November; that is thirteen months, and there were sixty days advertising; that carries it very near a year and a half, I guess.

9187 Q. The schedules were prepared early in the summer; were they not?

A. I am not aware of it.

Q. When were they prepared?

A. My impression is they were not prepared until the fall, after we came back from our summer vacations, all of us; that is my impression.

Q. When did you first hear the total capital proposed?

A. That I could not tell.

Q. Did you state to Mr. Rowland, or did you hear anybody say any thing to him on the subject of how he was to appraise the plant of the New York Company?

A. No, sir.

Q. Was it appraised regardless of its cost as it stood on the books?

A. So far as he was concerned, he never knew what it stood at on the books; that is, I cannot conceive how he would know.

Q. Do you know?
A. Do I know what?
Q. Do you know how it stood on the books?
A. No, sir; I couldn't tell now; I have no recollection of the figures.
Q. Did you ever have that ascertained as president of the company?
A. That I couldn't tell you; the valuation on the books, I knew, had nothing to do with the valuation of the property.
Q. What bulk-heads or piers, or water rights so-called, did the New York Company own in 1884?
A. They owned from center line of Twentieth street to the center line of Twenty-second street on the East river, excepting Twenty-first street; Twenty-first street being in between that, the city claimed as a roadway.

By Senator MURPHY:

Q. Half of each block and one entire one?
A. The whole of each front between Twentieth and Twenty-first and between Twenty-first and Twenty-second the property covered two entire blocks on the river.
9188 Q. I understand you to say half of one pier?
A. No, sir; from the center of Twentieth street.
Q. Does that center go down to the pier, or just the street?
A. There are no piers; we had the water-front.
Q. The bulk-head?
A. The bulk-head, the water-grant, out to Avenue C.

By Mr. TREMAIN:

Q. That property was acquired by the New York Company when?
A. I could not tell you; long before my time.
Q. A great many years ago?
A. I have been there twenty-four years, and it was before my time.
Q. Your earliest recollection fixes the water-front at what point, in respect to Avenue A or B?
A. Out to Avenue C; 1,000 feet out beyond where it is filled in now; or 600 feet.
Q. The line runs beyond Avenue C now?
A. Oh, no, sir; it only runs to Avenue B now.
Q. The land runs to Avenue B?
A. Yes, a part of Avenue B; Avenue B runs up to one portion of the property; and if continued would run out into the river again before it leaves us.
Q. Your earliest recollection fixes the land extremity at what point on Twenty-first and Twentieth and Twenty-second?
A. I cannot tell you; I cannot remember those figures.
Q. About what point?
A. I don't know how to get at it, how to describe it.
Q. How much has been filled in?
A. Within my recollection?
Q. Yes.

A. I don't know that any has, in my recollection.
Q. Well, has any?
A. I don't know that there has; I did not go up there in my early days; I only kept books in my early days.
9189 Q. To the best of your recollection, has any been filled in during your connection with the New York Company?
A. I couldn't say whether there was some filled in in the first part or not; I didn't go to the works; had no connection with them, and I didn't know what was being done there.
Q. Whatever was filled in was charged in the expense account to labor and materials, was it not?
A. It would have been charged, I should suppose, but I cannot tell you whether there was any filled in or not; if there was any filled in it naturally would be charged to labor; there would be no material.
Q. When was this water-grant, that you speak of, from the city made?
A. I have said it was so many years before my time I couldn't tell you.
Q. You did not state when the grant was made; you stated when it was filled in?
A. You just asked me when it was filled in.
Q. No; when was the water grant from the city made?
A. Made to us?
Q. Yes.
A. It was made years before I went there; I couldn't tell you when.
Q. You went there when?
A. The beginning of 1861.
Q. Nothing was paid for it, was there?
A. I can't tell what was done before I went there.
Q. Don't you know what the books show?
A. I never looked to see; I don't know anything about it; I only knew we were in possession of it.
Q. What was then the capital of the company?
A. At that time?
Q. Yes.
A. Seven hundred and fifty thousand dollars at that time.
Q. In 1861?
A. In 1861.
Q. Since that time the stockholders have not paid in any cash, have they?
A. No, sir.
9190 Q. The company was reorganized in 1871, was it not?
A. Eighteen hundred and seventy-one.
Q. Under the general laws?
A. The general laws of the State.
Q. The general gas-light laws?
A. Yes, sir.
Q. At that time a new capital was fixed for the new company, was it not?
A. It was organized with a new capital.
Q. Of $4,000,000?

A. Yes, sir.

Q. That capital was distributed among the stockholders of the old company?

A. *Pro rata.*

Q. At the rate of four shares for one, was it not?

A. Yes, sir; two shares of $100 for one of $50; being $4 of new capital, for $1 of old capital.

Q. Your shares were exchanged in the Consolidated Company at the proportion of 189 shares of Consolidated stock for 100 shares of New York stock, were they not?

A. Eighteen hundred and sixty-nine 6-10 I think was the proportion.

Q. What was the stock of the New York Company selling for in the summer of 1884?

A. That is a difficult thing to tell.

Q. Don't you know about?

A. No, I do not.

Q. Over 300, wasn't it?

A. Oh, no; if it had been I would have sold out and left it; it was 160 or 170; somewhere along there; 160, perhaps; I should think 160 was all it was worth, and all it would sell for at that time, on an average; Mr. Smith suggests that I should make a correction as to the conditions of the contract; he has possession of the contract that I should state, in the testimony, what the condition was, that I was to render my best services in return for it; it is not a gratuity.

Senator MURPHY: That is why I asked you the question—why you got $10,000, and you said it was for past services.

9191 The WITNESS: The contract was for past services, but I work for that money, and I earn it, I think.

Senator MURPHY: That will go as a portion of the record, that you work for $10,000.

The WITNESS: And I am obliged to give my best services, and, if I die, it stops.

Mr. TREMAIN: Is there any contract now in writing?

The WITNESS: A copy of the resolution covering that ground.

Senator Murphy directs the witness to attend at a subsequent meeting to be held at the same place, at eleven o'clock on Thursday, December 17, and the witness agrees to attend at that time, and to bring a copy of the resolution above mentioned.

Adjourned to Wednesday, December 16, 1885, at 11 a. m.

NEW YORK, FIFTH AVENUE HOTEL,
December 16, 1885—2 p. m.

The Committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the committee.

J. YALDEN, being duly recalled, testified as follows:

Q. You are prepared to give evidence with reference to the financial history and condition of the several constituent companies?

A. Yes, sir.

Q. I call your attention to the Manhattan?

A. Yes.

9192 This company was incorporated under the Laws of 1830, chapter 59, passed February 6, 1830, with a capital stock not to exceed $500,000, in $50 shares, and as soon as possible thereafter commenced its business. The first subscription of capital was shortly afterward paid in. Subsequently, under the Laws of 1847, chapter 163, an act was passed April 29, 1847, providing for the increase of the capital of the Manhattan Gas-light Co., to $1,000,000 in $50 shares, and up to January 1, 1851, the sum of $850,000 had been paid into the treasury in cash on account of the said stock of $1,000,000, and again under the Laws of 1852, chapter 50, an act was passed March 25, 1852, to increase the capital stock $1,000,000, at such time as the board of directors might prescribe.

By a later act under the Laws of 1855, chapter 543, passed April 17, 1855, power was given to the Manhattan Gas-light Company to increase their capital stock $2,000,000 at such time as the board of directors might prescribe by resolution of said board, with power to adopt such resolution within six months from the passage of the act.

Under a resolution of the board this issue of $2,000,000 worth of stock was credited by a transfer of $18 per share, amounting to $720,000 (40,000 shares at $18 per share), from the surplus profits of the company, and the issue seems to have been made to the shareholders for the equivalent of their present holdings and the remainder, viz. $32 per share was paid in in cash by the 1st of January, 1866.

To show the particulars of these transactions I have abstracted the details of the capital account on pages — to —. By the books of the company it appears that no business was done by the company until about February 1, 1836, and the details of this for the period

9193 to November 11, 1884, I show upon statement, pages — to —, being an abstract of the profit and loss account for the whole period of their doing business. It gives in totals, by yearly and five-yearly periods, the gross income and total cost of gas, and depreciation with dividends paid, and at the foot of such statement the tabulated amounts.

These particulars show that the company, during its business period, divided among its shareholders the sum of $25,847,675.66, which includes $1,500,000 (part of $2,000,000) of certificates, and the interest thereon paid to the shareholders out of the surplus profits, and likewise includes $720,000, before referred to as credited up for capital on account of the last issue of shares. After this the company had a balance to their profit and loss account of $876,134.67, which really represented the surplus capital to provide for the increased value of the assets, as shown by their books, beyond the amounts which these investments presumably cost.

The properties, etc., of the Manhattan Company were, on November 11, 1884, transferred to the Consolidated Company, at a largely increased value beyond that stated on the books of the former company, and in explanation of this appreciation or increased value of assets, as taken over by the Consolidated Company, the particulars on

page — will show the state of the accounts upon the books of the Manhattan Company when they were closed on November 11, 1884, and the value of same as taken over by the Consolidated Company.

The balance as shown thereon being $11,940,000, equal to the stock issued by the new company in payment of the properties, franchises, etc., of Manhattan Company.

9194 The column on the debit side of this account, headed "Appreciation written up," and amounting to $7,093,462.11, gives in detail the increased value placed upon the various properties and franchises beyond the amount of presumed cost or value stated in the books of Manhattan Company.

Statements are also given upon pages — to — of the capital investment for real estate, buildings and improvements, services and mains and meters, showing in detail the outlay, year by year, from the inception of the company to November 11, 1884, and giving the methods and forms the Manhattan Company treated their investment accounts.

A further statement on pages — to — is given of the capital stock and surplus profits, according to the books of the company used in the business, and upon comparison will show that the Manhattan Company was in possession of ample capital, and sufficient to enable them to accumulate very large profits, and so pay the various dividends.

In July, 1863, this company sold to the Metropolitan Gas-light Company, New York, their real estate and station at Sixty-fifth street, together with the mains, services and meters in use above the center of Thirty-fourth street, for the sum of $685,301.02, and received therefor a mortgage for $161,500 and stock in the said Metropolitan Company 2,356 shares of the par value of $1,178,000.

This stock of the Metropolitan Company appears to have been placed in the hands of Moses Taylor and Henry Young in trust, and by them sold for the benefit of the Manhattan Company; the proceeds of this sale were used to pay the fifty-eighth dividend of the Manhattan Company.

The particulars of this sale, as far as I can ascertain at present, are not fully described in the books, but a complete investigation
9195 would no doubt reveal the exact manner in which this transaction was consummated.

In the early part of 1857, and continuing until October, 1863 the company was in the habit of transferring, at certain periods, an amount from profit and loss to the credit of depreciation account, creating a reserve fund to meet the wear and tear of the various properties and works, and during these years the amounts so charged to profit and loss amounted to nearly $1,000,000.

It seems, however, that the company having also provided for alterations and improvements by charging such expenses to the profit and loss account, subsequently by resolution of the board of directors in November, 1863, they re-transferred $756,288.51 to the profit and loss account, and the balance then left, $500,000, was together with $1,500,000, credited to the registered certificate account under date of June 1, 1867, to meet that amount of certificates before referred to.

These registered certificates were paid in cash by the Manhattan Company by redemption and by installment from the period of December 1871, to October, 1877, with interest at seven per cent. from the date of issue until payment.

I have compiled a statement, fol. —, of the dividends paid by the Manhattan Gas-light Company during the period of its business, showing at stated periods the total capital subscribed in cash, and dividends paid, giving a comparison between a calculation of ten per cent. on the capital paid up and the dividends paid.

The results of this shows that, basing it upon the actual cash capital subscribed, amounting to $3,280,000, there was an excess of dividends paid beyond ten per cent. of $15,509,544.13.

9195 In the year 1856, however, I have included in the dividend $18 per share on 40,000 shares, transferred from surplus profits to the credit of these shares, which, with the $3,280,000 cash subscribed, completes the full capital account of $4,000,000, but as the sum of $720,000 was credited to the capital as before stated, and subsequently treated as capital stock, I have deducted this from the amount of dividends, and reduced the excess of dividends over ten per cent., to $14,789,544.13.

From the foregoing statements the following are the benefits derived by the stockholders of the Manhattan Company from the operations from 1836 to 1884 on the subscribed capital as follows:

Total capital subscribed in cash		$3,280,000
Transfer from surplus profits as before mentioned, $18 per share on 40,000 shares (last issue)		720,000
		$4,000,000
Dividends paid to stockholders as per account fol. — to —, inclusive, of $1,500,000, part of the issue of registered certificates and interest at seven per cent., until payment	$25,847,675 66	
Balance of depreciation account included in issue of $2,000,000 certificates	500,000 00	
	$26,347,675 66	
Deduct, credited to capital stock on account of last issue of shares (included in amount of dividends)	$720,000 00	
Total dividends, certificates and interest thereon paid in cash		$25,627,675 66

9197 Increased valuation beyond stated value of real estate, plant, works, mains, services, etc., in books of Manhattan Company, and the appraisement to the Consolidated Company.

Balances of the separate accounts		$4,872,999 49
Appreciation	$4,764,462 11	
Franchises	2,329,000 00	
Total appreciation on assets		7,093,462 11
		$11,966,461 60
Liabilities of Manhattan Company assumed by Consolidated Company	$620,740 78	
Deduct value of coal, lime, gas, customers' accounts and other assets taken over	594,279 18	
		26,461 60
		$11,940,000 00

For which stock in the Consolidated Company was issued to the stockholders of the Manhattan Company who therefore have received for the original investment of $3,280,000.

Dividends and certificates paid in cash		$25,627,675 66
Stock in Consolidated Company	$11,940,000 00	
Less cash capital subscribed to the Manhattan Company	3,280,000 00	
		8,660,000 00
Total received beyond the original cash investment		$34,287,675 66

9198 (The witness continued:) I have compiled the statement of dividends paid by the Manhattan Company from 1836 to 1884; the former date is when the first capital was paid in.

Q. What have you compiled?

A. A statement of dividends paid by the Manhattan Company during the period of its business, giving a comparison between ten per cent. on the capital paid up and dividends paid; the result of these sheets is, that basing it upon the actual cash capital subscribed, $3,280,000, there was an excess of dividend beyond ten per cent., $15,509,000, the profits over and above ten per cent.; they really paid in round numbers about $15,000,000 more than ten per cent.; $3,280,000 and $720,000, making $4,000,000; the total dividends paid to stockholders amount to $25,847,675.66; the balance of depreciation account included in the $2,000,000, making a total of $26,347,675.66; deducted from that, the capital stock on hand, last issue of stock, leaves the total dividend of $25,062,675.66.

Q. That sum is equal to ten per cent. upon the investment actually made plus about $15,000,000?

A. Yes, sir, the increase of valuation beyond the stated valuation of real estate, plant, etc., in the books of the Manhattan Company, and appraisement of the Consolidated Company, $4,872,999.49; that is the total of what they cost.

Q. That is a difference between what two things?

A. The purchase and what was sold; the purchase of the property, real estate and plant, they sold for a million of dollars to the Metropolitan Company; the appreciation—the amount they were valued at—to the Consolidated Company, in addition to that, $7,093,462.11; $11,940,000, the equivalent of stock issued to the Manhattan Company by the Consolidated Company; the cash capital, $3,280,000; total, $34,287,675.66.

9199 Q. You have spoken of registered certificates; state what they are.

A. The registered certificate is simply one given by the Manhattan Company instead of dividend which represents the accumulation of profits that they had made and which had not been divided in dividends; these certificates, amounting to $2,000,000, were given in the year 1863.

Q. That they had $2,000,000 in 1863 which might have been distributed as dividend among the stockholders of the Manhattan Company, but instead of doing that, they issued these to those stockholders?

A. Yes, sir; the same amount which would have been distributed to them in the form of a dividend.

Q. Did they, during the same year, pay a dividend as divided in the regular way?

A. Yes, sir.

Q. How much dividend did they pay that year?

A. Five hundred and twenty-five thousand dollars.

Q. In the form of dividends?

A. Yes, sir, in 1863 the actual cash capital paid in was $2,780,000 and they transferred from their profits at that time a further amount, $720,000, making three and one-half millions; that year they paid dividends in cash equal to $525,000.

(By Senator ROBINSON:)

Q. That dividend was on the original $2,700,000?

A. Yes, sir, and they issued at the same time certificates bearing interest at seven per cent. to the amount of $2,000,000.

Q. Which were, in effect, dividends represented by profits accumulated paid by installments at the convenience of the company with interest at the date of payment; now, about your per cent.—what per cent. was it?

A. The two together is equal to seventy-two and one-half per cent. of the actual capital of $3,500,000; and upon the actual cash capital paid in of $2,780,000 which was distributed that year, it was ninety-eight per cent.

9200 (By the CHAIRMAN:)

Q. In 1863 there was in effect distributed among the stockholders of the Manhattan Company ninety per cent. of the amount of cash capital stock actually paid in?

A. Yes, sir; in cash dividends and stock certificates.

Q. Does that finish your report of the Manhattan?

A. Yes, sir.

Q. So that, if for purposes of computation, you add to the cash capital theretofore paid in the accumulated surplus profits represented by $720,000 and treat the capital as if $3,500,000 there was in the year 1863 distributed in cash certificates subsequently paid with interest an entire dividend of about seventy-two per cent. upon such capital so estimated?

A. Yes, sir.

Q. How do you find the item of cost of the plant distributed in respect to the cost of real estate, and did you examine the books with a view of ascertaining exactly what the lots themselves cost the company, independent of plant or structures upon them?

A. Yes. I thoroughly dissected all those items and examined their books from 1831 to 1834 and ascertained what moneys had been paid out from time to time in respect to those properties.

Q. Did you separate the cost of the plant—services, meters, street mains, valves, etc., and office buildings and office furniture and all other expenses so as to be able to tell the committee what the real estate which is given in the schedules of appraisement at the figure of $3,563,000 cost the company as it appears by its books?

A. That is all got out and tabulated on the "A 10" and "A 11."

Q. As a result of that tabulation and examination, is it not true that all of the lots comprising the real estate valued in those
9201 schedules of appraisement for consolidation purposes at $3,563,000 and also the value of bulk-heads, piers, water rights, etc., specified in the same schedules of appraisement at $425,000, and also including the item of office buildings of $175,000, and an item of office furniture, $20,000, and the laboratories, photometric rooms, etc., $5,000, making in all an amount of $4,163,000 as a result of those five items in the schedule of appraisement with a view of comparing those five items with the actual cost of the lots as they appear on the books of the Manhattan Company?

A. Yes, sir.

Q. Is it not true that those lots cost the sum of $865,668.51?

A. Yes, sir.

Q. So that the items I have just specified that are represented by a capital of $4,163,000, appear to have cost $865,668.51?

A. That is so, but it should not include the two items of $20,000 for office furniture and $5,000 for the laboratories.

Q. Is it the fact that it appears from the books, as it apparently does, according to page "A 11" that the lots at Irving Place and Fifteenth street cost $25,000?

A. It did according to the books.

Q. At what amount is that stated in the appraisement schedules?

A. One hundred and seventy-five thousand dollars.

Q. What year was that appraisement?

A. I am afraid I could not tell you without the books. It was in the early part of the company's existence, thirty or forty years ago.

Q. Is it not a fact that the books show that the taxes and assessments were charged to expense account?

A. Yes, sir.

Q. And paid for by current earnings?

A. Yes, sir.

Q. Is it not the fact that the lots at Eighteenth street and
9202 North river, that cost $22,986, are valued in the appraisement schedules at $74,738?

A. I could not tell you. In the aggregate I can tell you what it cost, as against its value. They charged everything up to two accounts, under the heads of North river and East river property.

Q. So that, in these two accounts, the items for structures, plant and lots were intermingling?

A. Yes, sir; but I dissected and got the results on "Sheet A 11."

Q. Now, following the comparisons farther, what do you find to have been the cost of the plant,—which, separate from the street mains, meters, and services, appears to have been valued in the schedules at $3,623,000?

A. Three million, six hundred and twenty-three thousand dollars. If you add to that $3,000,000, for office furniture and laboratory, they cost $2,550,309.72.

Q. What are they valued at, total, in the appraisement?

A. Three million, six hundred and forty-six thousand four hundred and three dollars.

Q. What is there on the books to represent that assumed appreciation, *of* anything, of about $1,090,000?

A. Nothing.

Q. Is it not true that the total amount appearing on the books of the company to have been expended for the construction of buildings and improvements, not plant and apparatus, is only $513,-022.94?

A. That is correct.

Q. If it be assumed that such buildings and improvements are real estate, the cost of which is not charged to any other account—even then the real estate would not appear on the books to have cost more than the sum of $4,378,691.45?

A. No, it would not.

Q. But the fact is, is it not, that this first item of $513,022.94 has been paid for out of current earnings?

A. No, capital and earnings.

9203 Q. In your report you did not state that any amount appears by the books to have been paid for in special privileges and franchises; do you find any such item?

A. There is nothing of that kind in the Manhattan Company.

Q. Or for patents?

A. No.

Q. No expenditures of that character appear?

A. Not specifically stated, no; if there are, they are charged in construction, and are minor sums.

Q. But you did not discover any?

A. No, sir.

Q. How did you find the item of depreciation treated upon the books you have alluded to in your report; please explain that item as it appears in your tables more fully, and how the company in their accounts treated it?

A. Well, several years ago the Manhattan Company reserved an amount of profits to meet depreciations, and at the same time apparently continued to make all necessary repairs and additions at the expense of revenue, thereby charging, in point of fact, the depreciation twice over; later on when they discovered this to be so, they credited back the sum of nearly $800,000, to their profit and loss account, and divided up $500,000 of that reservation in the certificate which I previously mentioned.

Q. About what year?

A. About 1863; so in reality at the expense of revenue the works were presumably in good working order and practically as good as new at the time they were transferred to the Consolidated Company.

Q. Is there any thing in the books respecting this item of depreciation that leads you to change the testimony you have already given as to what is proper in that respect?

A. No; I think the study of their figures will approve my figures in the custom of this company.

Q. Excluding the item appearing in the Consolidated
9204 schedules of appraisements of rights, franchises, etc., of $2,-329,000, what do you find by the books of the company to have been the actual cost of the properties that appear in those schedules to have been valued at a total of $9,611,000?

A. What is represented in the figure of $9,611,000 cost the company $4,873,000, in round figures.

Q. And no more?

A. No more; it could not.

Q. So that for the alleged appreciation of $4,738,000 nothing whatever appears upon the books?

A. Nothing whatever, no representative value.

Q. Do we understand from your report that upon a cash contribution as and for capital of $3,280,000 in all paid in at various times, there has been paid out to the stockholders in cash, in all amounting to $25,627,675.66, regardless of any stock certificates in the Consolidated Company?

A. Yes, sir. That is the aggregate sum that they have received in cash, exclusive of the sum of $720,000 that went into the capital. That $25,000,000 is the actual sum paid in cash by way of dividends and certificates.

Q. Is it also exclusive of the certificates of stock of the Consolidated Company held by the stockholders of the Manhattan Company after exchanging their shares?

A. It is.

Q. The nominal or par value of which is $100 for each share?

A. It is, and to make it clear the present stockholders hold that amount of stock in addition to $25,000,000 that they have received.

Q. What amount?

A. Eleven million nine hundred and forty thousand dollars.

Q. It has already appeared in the testimony that, in addition to the current dividends paid by the Manhattan Company to its shareholders during the year 1884, those shareholders received a
9205 so-called extra dividend or a contribution of some sort realized from the assets of the Manhattan Company, and that an amount of about $400,000 was distributed among the shareholders of the Manhattan Company shortly after the consolidation, do you find either on the books of the Manhattan Company or on the books of the Consolidated Company any item exhibiting such payments or distributions?

A. There were entries in each company's books in reference to that, and the sum of $400,000 that you allude to is the last dividend that was paid to the stockholders of the old Manhattan Company that was paid by the Consolidated Company and subscribed to November 11, 1884, which was paid for by the Consolidated Company from the realization of assets of the Manhattan Company amounting to $594,000, which consisted of customers' balances, coal, lime and other supplies.

Q. So that in addition to the valuation stated in the schedules of the appraisements, there were enough assets of the Manhattan Company to yield the sum of $549,000?

A. Yes, sir.

Q. And out of that sum there was paid this distribution of $400,000 to the stockholders of the Manhattan?

A. Yes, sir.

Q. What became of the balance of $190,000?

A. That went to pay the current liabilities of the Manhattan Company, taxes and other things, as it appears on statement "A 10."

Q. Was that $400,000 in effect a dividend paid to the stockholders of the Manhattan Company?

A. Yes; it was ten per cent. on their stock and paid from the assets of the Manhattan.

Q. It had not been capitalized in the Consolidated?

A. No, sir.

Q. It was transferred to them?

A. Yes.

9206 Q. They collected them and paid them back to the Manhattan?

A. Yes, sir.

Q. Whether or not it was the diminution of the working capital in the combined properties, to the extent of that distribution of $400,000?

A. Practically that is the effect of it; it was the working capital divided among shareholders.

Q. Is there, as appears by the books, yet a small sum or small percentage to be divided among those same Manhattan shareholders, or is the entire bulk of the assets represented by this $590,000 now exhausted?

A. By these figures the liquidation of the Manhattan is practically effected.

Q. Does that correspond with the accounts of the adjusting committee?

A. Yes, sir; these figures are based upon the figures of that committee.

Q. Do you not find it to be true that the adjusting committee have not concluded their adjustments in respect to all the constituent companies?

A. I do not know but they have; I think they have as far as the Consolidated is concerned; the accounts of the Consolidated Company in each of the constituent companies are balanced off as far as the Consolidated books are concerned; the individual constituent companies having so adjusted their affairs as against their own stockholders.

(By the CHAIRMAN:)

Q. In your report what do you mean by the presumed cost of plant, work, etc.?

A. By that I mean the original outlay for the property plus its additions and improvements, less its deterioration or depreciation; therefore, the balance represents the fair value of its cost or worth.

Q. Then, by presumed cost you really mean what is equivalent to actual cost?

A. Actual cost.

9207 Q. Have you made an examination of the Metropolitan Company's books also?

A. I have.

Q. Are you able to give evidence to the committee in a similar manner?

A. Yes, sir.

This company was organized in 1858, under a special act of the Legislature with a nominal capital of $2,500,000.

Upon reference to the statement marked "C1," it will be observed that of this capital the sum of $612,700 only was received in cash and the remainder was paid for the charter and construction account. On this latter account the sum of $1,178,000 was paid to the Manhattan Company for the purchase of the Sixty-fifth street property, works, mains, etc. (reference to which is made under heading of that company), and was apparently issued in payment therefor at the rate of about fifty cents on the dollar.

This company commenced business about the year 1862, and was successfully carried on for the next twenty-two years, as will be observed by the profit and loss account on pages C — to —, notwithstanding the fact that dividends were paid upon a large amount of capital issued for property and franchises, a great part of which was issued at a large discount.

The dividend account on page C —, shows that the company commenced paying dividends in the year 1866, and continued doing so with the exception of the year 1873. The sum paid to stockholders in the aggregate including scrip certificates of $1,000,000 with interest thereon of $761,249.36 is $7,573,749.36, and it will be observed

from the statement that this is an excess over ten per cent. upon the whole of the capital of $1,973,949.36.

9208 Upon reference to the capital investment account of real estate, property, etc., page C — to —, that although some of the property, plant, etc., was paid by stock issued at a discount, the valuation to the Consolidated Company, including franchises, is largely in excess of the amount so charged as the purchase price of the same, and as detailed upon the account marked "C —," the cost (including the stock) of the various properties transferred to the Consolidated Company according to the books was $5,292,175.35, giving an appreciation between that and the appraisement to the Consolidated Company ($7,175,000) of $1,882,824.65.

At various times this company issued bonds and mortgages for considerable sums upon their property, the interest thereon being charged in the regular way of business to the profit and loss account before the profits were determined; the amounts so outstanding and assumed by the Consolidated Company were for bonds $658,000 and mortgage $30,000, making $688,000, which was deducted from the appraisement of the property value and stock of the Consolidated Company was issued for the net amount which, in round figures, was increased to $6,500,000, as hereafter shown.

In addition to this, however, there was a large amount of assets belonging to the company which were not transferred to the Consolidated Company but subsequently realized and divided among the stockholders to the extent of $525,000, and still remains an undivided surplus of about $160,000.

The benefits, therefore, derived by the stockholders of this company for:

9209	Total capital paid in cash	$612,700 00
	Total capital for charter	144,000 00
	Total capital for purchase of Sixty-fifth street property	1,178,000 00
	Total capital for construction	565,300 00
	Making a total of	$2,500,000 00
	Dividends paid to stockholders in cash	$6,500,000 00
	Scrip and interest issued in 1870, subsequently paid off by instalments	1,073,749 36
	Stock in the Consolidated Company	6,500,000 00
	Making a total of	$14,073,749 36
	To which must be added division of assets since consolidation, paid in cash	525,000 00
	Present undivided surplus, say	160,000 00
	Making a total of	$14,758,749 36
	From which deduct the nominal amount of stock, capital	2,500,000 00
	Total received beyond original investments	$12,258,749 36

This company claims to have incurred considerable loss by explosion and fire. By the books, it appears that the loss to the company on this account in 1865, was $108,962.22, $12,000 of which was charged to construction account for new coal sheds, and the balance to profit and loss account, less a small salvage realized upon coal.

9210 In the purchase of the Sixty-fifth street station before referred to, the amount charged to the construction account, as representing the value of the property so taken at cost, and the par value of the stock appears to be the sum of $533,922.62.

Q. I understand you that the stockholders of the Metropolitan paid in $2,500,000?

A. In cash and patents and construction and franchises.

Q. Now, about when was that put in and how much each year?

A. That is shown in "C1."; it was put in in the years 1860, 1861, 1862 and 1863.

Q. I understand you from that investment they have actually taken out $8,258,000 and odd dollars?

A. Yes, sir.

Q. They have left in their hands what?

A. Six and a half million dollars in the Consolidated stock.

Q. Reckoned at par?

A. Yes, sir.

Q. The amount taken out as you have given it includes $160,000 that is ready for and awaiting distribution?

A. Certainly; that is so.

Q. Have you made an examination of the books of the Metropolitan Company with a view to ascertaining the cost as it appears from those books of the real estate, and of the plant and of the items specified in the schedules of appraisement or the totals therefor?

A. I have.

Q. Will you please refer to the item resulting from your previous compilation of the appraisement of the schedules of $5,312,000, being the total of the appraised values of the plant, real estate, etc., of the Metropolitan Company, and state what those items appear on the books to have cost that company?

A. Five million two hundred and ninety-two thousand one hundred and seventy-five dollars.

Q. Does that cost represent money actually expended?

A. Not wholly so.

9211 Q. In so far as it does not represent money actually, detail?

A. It represents $3,405,000 in money and about $1,887,000 in stock, the greater part of which latter amount was given at the rate of fifty cents on a dollar; hence, the reason why the appraisement so nearly approaches the actual stated cost in the books.

Q. That is to say, what appears to have cost $1,887,000 actually did cost $943,500?

A. Yes, sir.

Q. If that which did cost $943,500 was added to the actual cost $3,405,000, wouldn't the total cost thus appear to be $4,348,500?

A. Yes, sir; it would be $994,000 less and the appreciation would be 994,000 more.

Q. If the appreciation was thus $943,500 more than the difference between the cost as stated in that way on the books and the appraised value of the items comprehended by the figure 5,312,000 would be the sum of what?

A. Two million eight hundred and twenty-six thousand three hundred and twenty-four dollars and sixty-five cents.

Q. Is there any thing upon the books of that company to represent an expenditure of such a sum or any part of it?

A. No, there is not.

Q. Is there any thing on the books of that company to represent property resulting from that sum or any part of it except as you have stated that stock was issued for property?

A. No, sir.

Q. Is there any thing on the books of that company to represent an expenditure for so-called rights and franchises, etc., in addition to the expenditures that you have, immediately preceding this question, detailed to compare with the item stated in the appraisement schedules of rights, franchises, etc., $1,863,000?

A. There is nothing beyond the $144,000 that was given for the charter.

9212 Q. Isn't that already included in the expenses you have mentioned?

A. Yes. There is nothing entered on the books of the Metropolitan for the rights, privileges and franchises.

Q. Whatever there has been expended, if any thing, for any such assumed property, appears in the expense resulting in the sums you have already stated, do they not?

A. They do.

Q. Then, as we now understand you, the figures you have above given of $2,826,324.65 include an appreciation for rights, franchises, etc., so called at an estimate of $1,863,000, as stated in the appraisement schedules?

A. Yes, it does.

Q. Referring to the statement in your report just read and to the figures on page "C5" and to the appraisement schedules, it is observed that the total net appreciation is stated by you at $1,882,-824.65, and that in the appraisement schedules there is an allowance made for so-called rights, franchises, etc., of $1,863,000, thus leaving an actual apparent net appreciation of $19,824.65—is that correct?

A. That is correct.

Q. Will you explain whether you found anything upon the books of the Metropolitan Company in reference to such a comparatively small appreciation—and by the word comparative, I mean in comparison with the appreciation found with the result of other companies as testified to?

A. Yes. That arises from two causes mainly; first, that the cost of the property is entered at its then double value by reason of stock being given at fifty cents on a dollar. There is nearly $1,000,000 charged up, and, secondly, as I am informed, the Sixty-fifth street property was cut in two by the New York Central Railroad, and

what was left was useless to them for the purposes of their business in consequence of their being deprived of their water front.

9213 Q. Which occasioned a depreciation to the front of how much?

A. Five hundred and ninety-eight thousand seven hundred dollars and eighty-six cents.

Q. If that depreciation last mentioned had not occurred as shown by the books, there would have been an actual appreciation in comparison with the cost, in all, of what amount as represented by the appraisement schedules?

A. Well, about two and a half million dollars. The actual sum is $2,481,525.51.

Q. Have you prepared a summary of the accounts of the constituent companies so as to show the results in respect to each of the companies in the same manner as the results you have just shown concerning the Manhattan and the Metropolitan Companies?

A. I have.

Q. Will you please produce them so that the committee may examine them to-night and examine you farther upon them on another occasion?

A. I will.

Adjourned until December 17, 1885.

NEW YORK,
FIFTH AVENUE HOTEL, *December* 17, 1885.

The committee met pursuant to adjournment.

Present: Hon John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain appears as counsel to the committee.

THOMAS K. LEES, being duly recalled, testified as follows:

9214 Examined by the CHAIRMAN:

Q. Did you bring the resolution of the New York Company, referred to in your evidence, on Wednesday of last week?

A. I brought a copy of it. (Witness produces a paper which he says is a copy of that resolution.)

(By Senator MURPHY:)

Q. This is a copy of the resolution which you testified to the other day that you was employed under?

A. Yes, sir.

Q. Can you aid the committee in ascertaining how the sum of $45,000,000 was reached as the capital of the several constituent companies, including the Mutual, which afterward declined to enter into the consolidation?

A. Only by examination of the schedules; if I had them I might possibly.

Q. What schedules do you refer to?

A. The schedules of consolidation in the hands of your committee.

Q. Was the $45,000,000 reached by adding up the original ap-

praisals of the several companies, or was it fixed as the aggregate amount prior to such valuations, if you remember?

A. I do not think it was fixed prior to that.

Q. Do you know how that was?

A. No, I do not.

Q. I see that the capitalization of your company was changed in 1871 from $1,000,000 to $4,000,000?

A. Yes, sir.

Q. When that change was effected was any new capital contributed to the concern?

A. No, sir; it was the abandonment of the charter and the organizing under a general law on a new valuation.

Q. Without any change of intrinsic values?

A. It was the same property.

Q. Prior to that time, the company existed by virtue of a
9215 special charter, and at that time you were organized under a general gas law passed in 1848?

A. I don't remember the date of its passage; it was the law at the time.

Q. What special privileges had the company, under its special charter, prior to 1871?

A. I don't know what they had had; it had originally exclusive rights in the city for a few years, but they had expired long before I went there.

Q. Are you able to say that it had any special rights or privileges derived either from the city or the State at the time of the change in 1871?

A. I think it had from the city; I cannot say what; it had right, certainly, to lay mains in the streets.

Q. In passing out of the old condition into the new, did you carry with you, as a company, any special rights, if there were any, which you had theretofore possessed?

A. Yes; I think that law under which it was incorporated by virtue of the act it carried over.

Q. Do you remember what, if any rights and privileges, were transferred prior to the subsequent organization?

A. I do not remember any thing special, sir; I know we had a water grant from the city to keep and fill in lots in Twenty-first street, purchased from the city, but when I don't know.

Q. Where were those water rights—designate by streets and river?

A. Between Twenty-first and Twenty-second streets, east of Avenue A. Another party had the same right to fill in the block below, and we bought that afterward so it now extends from Twentieth to Twenty-second street.

Q. There are no other rights that occur to you?

A. The right to occupy the street with our pipes.

Q. That was derived from the city?

A. Yes, sir.

9216 Q. From the common council of the city—when was that obtained?

A. I could not say; a portion of it must have been taken twenty-five years ago.

Q. Was it an exclusive right?

A. It was at the beginning, but that expired long before my time.

Q. Is the right which you enjoy concurrent, at the time of consolidation, with rights on the part of other companies?

A. I suppose it to be so.

Q. What process was employed by the New York Company in the manufacture of gas?

A. The Tessie-du-Motay.

Q. Is the same process now employed in the same works?

A. Yes, sir.

Q. According to the plan of increasing the capital stock, which was adopted by the New York Company in 1871, or the plan adopted by the constituent companies in 1884, as a matter of theory, at least, would it not be possible to increase the capital stock engaged in the manufacture and distribution of gas to an unlimited extent?

A. I think the stockholders would have something to say about that and object to it.

Q. According to the plan of increasing the capital stock which was adopted by the New York Company in 1871, or by the plan adopted by the constituent companies in 1884, as a matter of theory at least, would it not be possible to increase the capital stock engaged in the manufacture and distribution of gas to an unlimited extent?

A. That is a matter of theory, sir; I do not know whether it would be possible or not.

Q. Don't you know it would be?

A. I do not think it would be.

Q. As a matter of fact, would it not be possible to increase it to an unlimited extent?

A. I think not.

Q. What is to hinder it, as a matter of fact?

A. I do not know as a matter of fact; I do not think
9217 it would be possible for I don't think the people would take the stock.

Q. You did, in 1871, multiply the stock by four?

A. Yes, sir.

Q. And in 1884 multiply it by, at least two?

A. Nearly two.

Q. Wasn't it more than two, take it as a whole?

A. I could not say about that.

Q. Then, so far as your company is concerned, without any new contribution to the capital stock of the company, its share capital was increased, as a matter of fact, four-fold in 1871?

A. Yes, sir.

Q. And in 1884 it was multiplied by 1 89-100?

A. Yes, sir; share capital.

Q. Now, upon the same theory, it would be possible, would it not, for the present Consolidated Company to consolidate with—for example, the Equitable Company, and make a new appraisal whereby the aggregate capital of the new company would be still farther increased, might it not?

A. I am not a lawyer.

Q. On the same plan which was adopted that would be?

A. I think the law provides for that; I think it could be done under that law as it stands.

Q. If, from what was done in effecting the consolidation in 1884, it would be lawful also to make a new consolidation and a new appraisal whereby the capital stock should be still farther increased?

A. Is it fair to put me to that question, as a lay-man; I think it is possible, it might be so, and there may be legal objections I know nothing about.

Q. Do you see any reason why, if what I have stated could be done, there might not be still another consolidation, for example, with the Mutual, or with some company hereafter to be formed, and a new appraisal made, and stock still farther increased without the addition of any new capital stock?

9218

A. It is a thing I have not given a thought; I do not know whether it can be done or not.

Q. Do you see any reason why a new company might not be formed for the very purpose of effecting a new consolidation with a new appraisal and a fresh increase of capital stock upon the theory adopted in the consolidation of the companies in 1884?

A. I do not know whether it could be done or not.

Q. At the time of the consolidation were the several constituent companies manufacturing gas of equal power and extrinsic value per thousand cubic feet?

A. There was a difference in the quality of the gas.

Q. The gas manufactured by one works would be intrinsically worth more than gas manufactured at some other works in the city.

A. That was what we all said.

Q. Is it a matter of ascertained fact that the gas manufactured by some of these works is intrinsically better than that manufactured by others in the city of New York?

A. I do not think there is very much difference in them now.

Q. Is it a matter of ascertained fact, and not a matter of opinion, or a statement for the purpose of effecting a sale, that the gas manufactured by some of these works is intrinsically better than that manufactured by others in the city of New York?

A. I do not know really; it is a matter of dispute to this day.

Q. If the gas manufactured at some of the works should have a thirty-candle power, and the gas manufactured at other works should have nineteen-candle power, is it equitable and right that a thousand feet of each of those should be sold to the consumer at the same price?

A. I cannot answer that.

9219

Q. How many distinct gas works are now operated by the Consolidated Company?

A. I think five.

Q. Are they operated by the same process?

A. No, sir.

Q. Are they of equal quality?

A. I have no knowledge.

Q. Has the quality of gas manufactured at each of these five works been ascertained by some scientific process?

A. The city examiner does just that.

Q. Have you never examined or ascertained the result of that examination?

A. I have no data on the subject; it has been ascertained; I do not think I ever saw the figures; they have been published in the "City Record," but I have not seen it for months and months and I don't remember.

Q. If such examinations have been made, you have no recollection that you have ever known the result of the same?

A. I never have examined them.

Q. You have no recollection that you have?

A. No, sir.

Q. No recollection you have paid any attention to it?

A. No, sir.

Q. How long have you been engaged in the manufacture, in any way, in the city of New York?

A. I have been connected with the gas company twenty-four years.

Q. And yet have given no attention to the quality and comparative value of gas manufactured by the several companies?

A. I have paid no regard to that since the consolidation.

Q. Before the consolidation did you?

A. I looked at that occasionally.

Q. Have you any reason to think that the quality manufactured at the several works has been changed since the consolida-
9220 tion?

A. I do not think it has.

Q. Assuming the quality of gas manufactured by these several companies to remain as it was prior to the consolidation, what do you say as to the cost of manufacture at these several works as shown by these official examinations and reports; have you any knowledge?

A. No comparative knowledge as shown by that record as correct.

Q. There is an officer whose duty it is to test the gas made at these several works, and make a report in regard to the same?

A. Yes, sir, in the city.

Q. What is the name of his office?

A. Gas examiner; E. G. Love is his name.

Q. In fixing the price of gas that ought to be paid by the consumers in different parts of the city, do you regard it as a matter of entire indifference as to the different qualities, if there be a difference in gas, furnished to consumers in different parts of the city?

A. Yes, there is no attention paid to that whatever.

Q. And should be none?

A. Yes; some are twenty-five candle power; there is no attention paid to that whatever.

Q. And should be none; that is the answer?

A. Yes, sir.

Q. Why not?

A. It is impracticable to make a price for every candle power.

Q. Wherein is the difficulty; is the practicability difficult?

A. There might be a variation in the candle power in any two hours of the day.

Q. It would be impracticable to fix it with absolute mathematical accuracy?

A. That is what I mean.

Q. There would be no doubt about that?

A. No, sir.

9221 Q. Supposing the average lighting power of gas in one section of the city is much less than the average lighting power of gas furnished at another works for a different portion of the city, should the consumers of gas in those two sections of the city pay the same price for a thousand cubic feet of their gas?

A. I do not know how it can be avoided; I do not see how it can be helped.

Q. Supposing the lighting power in one section was twice what it is in another section, where the gas is manufactured at different works, is there any practical difficulty in saying that one shall pay more than another?

A. That is practically difficult, sir, because it cannot be made always in a fixed quality nor for a fixed cost.

Q. Are you not attempting to adjust it to a scale of mathematical accuracy—is that where the difficulty is?

A. That is one difficulty.

Q. What other?

A. Some people like one better than another.

Q. You mean to say some like gas with less lighting power rather than gas with a greater lighting power per thousand cubic feet?

A. I do not say that; some like a whiter gas and some complain of smoke of richer gases, and they are liable to get it.

Q. Other things being equal, is not the value of a thousand cubic feet of gas measured by its lighting power, its real value?

A. Other things being equal, yes.

Q. What other things enter into and affect the value of a given quantity of gas?

A. Freedom from smoke; a lighter gas smokes less and some people like it better, particularly if they have pictures about the room.

Q. Freedom from smoke is one thing; what else?

A. That is the principal thing.

9222 Q. Does that freedom from smoke sustain any fixed relation to the lighting power of gas; is there more or less smoke according to the power of gas?

A. A richer gas has more smoke and carbon in it.

Q. Could you detect the difference in the smoking?

A. Yes.

Q. So you could say, from your own observation, that the richer gas has more smoke than feebler gas?

A. Yes, sir; if it is too much too rich, it is sure to smoke; some like a lighter gas, for it has less illuminating power and is not so likely to smoke for that reason.

Q. Is there any way by which the smoke in this richer gas can be prevented?

A. Yes, sir; leave out the oil and make it lighter.

Q. You mean a feebler gas?

A. Yes, sir.

Q. Is there any way by which smoking can be prevented in a richer gas and still retain the light?

A. Not if it is too rich.

Q. What was the candle power of gas manufactured by your New York Company at and prior to the consolidation?

A. About twenty-five candles, if I remember; twenty-four or twenty-five.

Q. That was what it was at the time of the consolidation?

A. Yes, sir.

Q. For how long a time had it been so high as that?

A. Since 1880.

Q. Prior to that what had been its candle power—your company?

A. From sixteen to twenty-four.

Q. The average about what?

A. I do not know how it would average; the latter part of the time it was running up; the average I should think about twenty.

Q. At the time of the consolidation it was about twenty-four?

A. Twenty-four or twenty-five.

9223 Q. Was that a better gas than it was when it was twenty-candle power?

A. Yes, sir; I should think it was.

Q. Increase the power, increase in the value you receive?

A. Yes, sir; I changed the process and it came out a better quality of gas.

Q. Better in proportion to the increase of power?

A. No, better light; I had to get rid of that smoke by changing burners; if the burners are too large they must be cut down; the fault is in the gas; if it is too rich it will smoke any way; at times uneven.

Q. If some of the companies, at the time of consolidation, were manufacturing gas of an inferior quality, would not the effect of consolidation be to perpetuate a product of that quality of gas as against competition with a superior article?

A. No, I do not think it would.

Q. As a matter of fact, was that not one of the reasons which induced the New York Company to enter into the consolidation?

A. No, sir.

Q. Are you able to say whether or not that was a reason which entered into the minds of some of the directors of the companies?

A. I do not know what others did; I never thought such a thing.

Q. It did not occur to you, you say?

A. I said it.

Q. The agreement to enter into the consolidation was made, wasn't it, on the 29th of September, 1884?

A. I do not remember the date, whether it was or not; it was about that time.

Q. This resolution by which you were made secure in the enjoyment of $10,000 a year, bore date the same day?

A. You have the dates.

Q. This bears date September 29, 1884, so that it did not make much difference to you personally, what kind of gas was made, or what the price was?

A. Yes, sir; it made considerable.

9224 Q. You would be made secure of the $10,000 to start with?

A. Yes, sir.

Q. As a stockholder, you would be interested?

A. Not that; I would have some little pride, for it was a business I have been in for twenty-five years.

Q. What was the total amount of shares in the New York Company held by yourself or some member of your family?

A. I do not remember; 200 or 300 shares altogether.

Q. Wasn't it between 400 and 500, on recollection?

A. I think not; my wife had about 158, and I had about the same; if there is some standing on the book, it was transferred to somebody else.

Q. How does it happen there is 100 shares more standing in your name?

A. It is held by somebody else; I would get an order from the country, and until it is paid for, I take it in my own name; I held it, but it did not belong to me.

Q. You held it for somebody prior to consolidation?

A. Yes, sir.

Q. When the consolidation was effected and the stock distributed, was that which you held for somebody issued to you, in your name?

A. Issued to me and transferred a block issued to me and divided.

Q. Prior to 1880 what was the candle power of the New York gas?

A. I could not tell you.

Q. Wasn't it always lower than nineteen?

A. No, my impression is it would average about seventeen or eighteen candles; the contract with the city was sixteen, I think.

Q. Have you that contract now?

A. It has been renewed.

Q. Don't you know the candle power was raised in the contract with the city?

A. I did know it was afterward raised to the London standard.

9225 Q. There is no practical difficulty in manufacturing gas at a fair uniform candle power?

A. Not if it is all made on one plant entirely.

Q. How much expenditure was made by the New York Company on their plant at or about the time it commenced to manufacture gas by a new process which you have described to be the Tessie-du-Motay process, water-gas process? How much was expended, if any thing, and when?

A. I think that process cost us something over $600,000 for the process, plant and works.

Q. That money was expended during 1880 or 1879?

A. Both years.

Q. Was a part of that expenditure a payment of $300,000 to the Municipal Company?

A. Yes, sir.

Q. Was that paid in cash or stock?

A. Cash by installments.

Q. Extending over what period—when was the last payment?

A. I could not tell you.

Q. Extending over about how long a period?

A. It might be six months or twelve; I should not think it was over that.

Q. Was any part of the plant or apparatus sold at the time of that change?

A. No, sir; I think not.

Q. State what was done at the works in connection with effecting that change?

A. A new plant was put inside of the old works.

Q. The old plant was thus rendered useless?

A. No, sir, to take up gas if ever it is necessary and reserve it.

Q. You have not used it since?

A. A part of it.

Q. How much?

A. I couldn't tell you how much.

Q. You have not made any considerable quantity of coal gas since?

A. No, sir.

9226 Q. And the plant that had been adopted to coal gas has been held in reserve during the time since water gas commenced?

A. A portion of it.

Q. For which the $300,000 was expended?

A. Not entirely.

Q. How much?

A. I could not tell you; it has been out of my head for the last five years.

Q. You have two works?

A. No, sir; one; Twenty-first street and East river.

Q. And all that was done in respect to that was at these particular works?

A. Yes, sir.

Q. The same retorts used?

A. No, sir.

Q. The same meters were used?

A. Yes, sir.

Q. The same benches used then as now?

A. Retorts and benches are identical; I have answered that.

Q. Are they used now?

A. No, sir.

Q. The accounts that have been taken from your books indicate the sum of about $290,000 expended for plant, apparatus, etc., about 1880, about the time of this change, and that the amount altogether

for that purpose was about $440,000, and after the depreciation had been written off, $290,000 appears still charged for that expenditure. Can you tell the Committee what is represented in property by that expenditure, at about the time of this change you refer to in 1880?

A. I have no idea.

Q. As a matter of fact, have you given any practical attention to the manufacture of gas for the last five years?

A. No, I have not given very much.

Q. You have attended to the business of the company?

A. I am the president, and have oversight of every thing.

Q. What is the name of the engineer at your works?

A. William T. Lees, my son.

9227 Q. How long has he been there in that capacity?

A. About five years.

Q. Are the engineers' reports made at stated periods?

A. No, sir.

Q. Is there any officer or subordinate who makes stated reports to the company concerning the quality or cost of manufacture of the gas produced?

A. No, sir.

Q. Do you have engineers' reports?

A. Yes, sir, daily; for instance, use so many pounds of coal?

Q. Do you have the gas tested at the station?

A. Yes, sir.

Q. Is that recorded?

A. Yes, sir.

Q. Are those records sent to the company?

A. They used to be sent to Hester street; I do not know what becomes of them now.

Q. You mean to say that the New York works and the distribution of their product has continued, without the quality of gas being gauged and recorded from time to time for the information and action of the board of directors in fixing the price, or for other business purposes?

A. I have never seen any such.

Q. That is the fact?

A. That is what I suppose to be the fact.

Q. That still continues?

A. I said at the Hester street office such reports used to come in to me every day; they are made in the office.

Q. Is that the only report that is made?

A. Yes, sir; except the daily send-off or manufacture.

Q. Does the business continue under the Consolidated Company in the same methods that it was conducted before the consolidation, so far as the New York branch is concerned?

A. The manufacturing department does.

Q. The distribution department does?

9228 A. No, sir; they make the returns to the Consolidated Company; it did not before; the distribution of gas I have nothing to do with.

Q. As a matter of fact, the gas which is delivered by the New

York branch works is produced and delivered in the same meters as it was before the consolidation, whether it has continued now as it was before.

A. The manufacture is the same, and I said the distribution through the pipes is the same.

Q. You say that the distribution through the pipes is the same; is not distribution to the consumers the same?

A. Yes.

Q. As a matter of fact, the only difference from the general conduct of the business is in the methods of reports and the persons to whom they are made?

A. Yes, sir.

Q. Prior to 1880, during your long experience as a managing officer of the New York Company, upon what principle was the price of gas fixed, if any, by your company?

A. I could not tell you; I do not remember what was done and said.

Q. Isn't it true that it was not fixed on any principle?

A. I could not say how it was fixed.

Q. It was always fixed arbitrarily by your company without regard to its cost or the capital involved?

A. I could not tell you how it was fixed.

Q. Did you ever hear those elements considered in fixing the price of gas?

A. I do not know what I heard five years ago; I could not tell you sir.

Q. About what was the price of the New York stock early in 1884?

A. I could not tell you whether it was 150 or 160, or 140 or 120, somewhere along there, I cannot remember.

Q. What contract, if any, existed at the time of the con-
9229 solidation between the New York Company and the engineer or superintendent of those works?

A. None.

Q. Was any resolution passed in respect to any other officer of the company than in respect to its president?

A. Not that I am aware of.

Q. Was there any agreement made between the company and any other of its officers or employees?

A. I am not aware of any.

Q. You are one of the vice-presidents of the Consolidated Company?

A. Yes, sir.

Q. Do you not know that there was a similar agreement with each of the officers of the Consolidated Companies?

A. With some of them.

Q. With whom is there not?

A. The Harlem.

Q. There is a similar agreement relating to the vice-president from the Manhattan Company, is there not?

A. No, sir.

Q. The vice-president of the Consolidated Company from the Manhattan Company?

A. He is the president.

Q. There is a similar agreement with an officer of the Manhattan Company who is now an officer of the Consolidated?

A. Yes, sir.

Q. Of the same amount as in your agreement?

A. The same amount.

Q. And also with a representative of the Metropolitan Company?

A. Yes, sir.

Q. And also with the representative of the Municipal and Knickerbocker?

A. The Municipal but not the Knickerbocker nor the Harlem.

Q. Which of the officers of the Municipal?

A. Mr. Gawtry.

Q. He is now the secretary of the Consolidated Company?

A. Yes, sir.

Q. The total of that liability amounts to $400,000, payable at various times?

A. It depends upon how long we live.

9230 Q. The contingency is only upon that?

A. Yes, sir.

Q. The total of that liability amounts to $400,000, contingent only upon life; that is correct, isn't it?

A. Yes, sir.

Q. It having already appeared that the capital stock of the New York Company has been increased from $750,000 to $7,560,000 without the contribution of any new capital by the stockholders; it is true, is it not, that such has come from the earnings of the company?

A. The increase has come from the earnings of the company?

Q. And those earnings have come from the consumers of gas?

A. Not entirely.

Q. Have they chiefly?

A. Those are the earnings; the increase came largely from the improvement in real estate, and in selling down-town property and in buying property up-town.

Q. Has not, by far, the larger part of that increase come from the consumers of gas?

A. Probably.

Q. Then, in effect, the consumers are made to increase the capital stock of the company for the benefit of its stockholders, are they not, and then the consumers are required to pay a price for gas based largely upon this increased capitalization?

A. I do not think it is so.

Q. Why not?

A. I do not think there is any thing to bear it out.

Q. Why not; you have given me the facts and I have got them before me; you said a large portion had been made by investment; is not the price of gas fixed in part with a view to obtain what you call a reasonable profit on the capital invested in the concern?

A. In part yes.

Q. Then, the increase of capital stock from whatever source
9231 it comes tends, does it not, to increase the price of gas?

A. It seems not; it is a matter of opinion of course.

Q. Taken as a proposition by itself, do you or do you not think that the increase of capital stock tends to increase the price?

A. I think it does not and I think it has not.

Q. You mean to say that if, for instance, $17,000,000 capital was sufficient to supply the city of New York with gas, that the price charged the customer would not be likely to be less than if that capital stock were increased to $50,000,000?

A. It has not had that effect.

Q. That is not an answer to my question at all?

A. It depends entirely upon condition of affairs.

Q. The stenographer will strike out the last answer; you mean to say that if, for instance, $17,000,000 capital was sufficient to supply the city of New York with gas, that the price charged the consumer would not be likely to be less than if that capital stock were increased to $50,000,000?

A. I could not say.

Q. Then you do not see why you should not want just as much profit to distribute on a capital of $17,000,000, as on a capital of $25,000,000 or $35,000,000?

A. I do not say that; it has not been the effect of that; that is what I argue upon.

Q. You mean to say that what you call a fair dividend to be distributed upon a capital stock of $17,000,000, would not be less than a dividend distributed upon a capital stock of $35,000,000 or $50,000,000?

A. The amount of this would vary the rates very considerably.

Q. What do you think is a fair per cent. for you to receive now from the Consolidated stock which you hold?

A. In the present state of the market about six or seven per cent.

9232 Q. It already appears that the actual capital contributed by the stockholders is only $750,000?

A. That is over sixty years ago.

Q. Supposing that that had remained the same, would you think that a fair per cent. would be about eight or nine times six or seven per cent.?

A. It could not have been the same; the profits from real estate were reserved to build the works and extend the works.

Q. Then the consumers build the works?

A. Yes, sir.

Q. And the stockholders own it and get the benefit of it, don't they?

A. Yes, sir; if they get anything.

Q. Do you think it is right to require the consumers to pay a dividend upon the capital stock which they themselves have created?

A. I have not given that very much thought.

Q. Not prepared to give an opinion upon it?

A. No.

Q. Do you know what the present candle power is of the gas produced by the New York works?

A. About twenty-five.

Q. How does it happen that the photometer report of Dr. Love fixes in the first week of December every day at twenty-two and a fraction of one?

A. I could not say.

Q. Is he likely to be correct about that?

A. He is not in my employ; I know nothing about it.

Q. Have not you any opinion as to his correctness?

A. No; he is able to stand for himself; he may possibly agree with our examiner; I do not know; I have not compared them.

Q. The extract from the photometer report for the week ending December 5, 1885, by Dr. E. G. Love, gas examiner, as I said, in the "City Record," and for the week ending November 30, New
9233 York gas is reported at 22.13, 20.03, 22.35, 22.12, 22.47, 22.30, as taken at the successive six days, the average being 22.23; do you testify that the candle power of your New York gas is more than that?

A. I don't testify; the last account I had of it was about twenty-five.

Q. You used to make it at about sixteen for the city contract?

A. Yes, sir.

Q. Did you ever run it up to twenty-four when you made coal gas?

A. I do not remember.

Q. Whether you have delivered gas as a business?

A. Never.

Q. Would it be practicable to make coal gas of that illuminating candle power?

A. It could be done and delivered.

Q. Could you make it satisfactory to any consumer?

A. I do not know; I never tried it.

Q. Don't you know it has not been done with coal gas?

A. I do not know.

Q. Don't you know it has not been done with coal gas in this city as high as twenty-four?

A. I never did it.

Q. It would cost a great deal to do it?

A. I should think it would.

Q. Would it not cost a great deal more to make coal gas of the illuminating power of twenty-four candle than to make water gas of the same illuminating power?

A. I do not know what it would cost to make twenty-four candle; I couldn't tell you what it would cost; I never made it; naturally it would.

Q. Was that one of the reasons why the New York had to change its method of manufacture from coal to water gas?

A. It might have been; I do not think it was; I am not certain.

Q. You know that at the time you made the change other com-

panies in this city were delivering gas of much higher illuminating power than the power delivered by the New York Company?

9234

A. Some were and some were not.

Q. The Manhattan only was not?

A. The Harlem.

Q. Isn't it true that only the Manhattan works produced gas of a lower illuminating power than the New York?

A. I couldn't tell you whether it was the only one or not. The following is an abstract from Dr. Love's report before mentioned, showing the average illuminating power for the same week, of the following companies, viz.: Manhattan, candle, average, 18.04; New York Company, candle, average, 22.23; New York Mutual, candle, average, 29.28; Municipal Company, candle average, 28.12; Equitable, candle, average, 33.04; Metropolitan, candle, average, 21.16; Knickerbocker, candle, average, 24.16.

Recess until 3 p. m.

DECEMBER 17—3 p. m.

Hearing resumed.

JOHN P. KENNEDY, a witness called by the counsel to the Committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You are the president of the Mutual Gas-light Company?

A. I am, sir.

Q. That company was organized under a special act of the Legislature, passed in 1866, was it not?

A. It was.

Q. Can you furnish the committee with the names of the original members that, in fact, did organize that corporation, those who acted in forming the organization?

A. Yes, sir.

9235

Q. And you will do so?

A. Yes, sir.

Q. Your action commenced in what year?

A. I became a director in the company in 1872, after the completion of the works.

Q. You were engaged in the construction of the works?

A. Yes, sir.

Q. What was the name of your firm?

A. Hoey, Kennedy & Company.

Q. Are there any book or books in existence that will show what those works cost?

A. I do not think there are; my partner died before the works were finished, and I think the books are out of existence.

Q. Have you any books or vouchers that will show that?

A. No, sir.

Q. Were the payments for those works paid in stocks?

A. Stocks were originally issued to the firm?

Q. To what extent?

A. Five million dollars, but a portion of that stock was returned to the company to be sold by them and the fund turned over to us, which was done.

Q. At what rate?

A. Fifty per cent.

Q. Was the entire amount of $2,500,000 thus realized?

A. Yes, sir.

Q. Was any more?

A. Not at that time; subsequently it became necessary to enlarge the works and there was an issue of bonds made of $1,000,000, which were sold.

Q. One moment—the question was, any more realized? Was it intended to relate to the stock?

A. No, sir; there was no more.

Q. Subsequently there was an issue of bonds?

A. Yes, sir.

Q. To what extent?

A. One million, which was sold at par.

Q. In what year?

9236 A. I think that was the year after the works were started; it was commenced in 1870, and finished in 1872; I think it was the first or second year after they were sold by the company; I was a director.

Q. Who was then its president?

A. I think Garrison.

Q. Who was its secretary?

A. Charles Place.

Q. Who took those bonds from the company?

A. The parties in interest took the majority of them.

Q. You mean the directors?

A. Yes, sir.

Q. Garrison took the most of them.

A. No, sir; he took his share; they were divided around *pro rata* among the stockholders and directors; they were sold at par.

Q. Are those bonds still outstanding?

A. No, sir; they were paid off about three years ago.

Q. Are there any bonds outstanding?

A. Not of that issue.

Q. Have any since been issued?

A. Yes, about three years ago some were issued.

Q. To the extent of what amount?

A. One and a half million dollars.

Q. Secured by a mortgage?

A. Yes, sir.

Q. They are still outstanding?

A. The most of them.

Q. One million three hundred thousand dollars?

A. A little less than that, $1,296,000, I think, still outstanding.

Q. Now, with the exception you have stated, nothing else has been received by the treasurer of the Mutual Company, for the pres-

ent outstanding stock, representing its capital and bonds that are unpaid?

A. I think not.

Q. Was any part of the present outstanding bonds, amounting in all to $1,296,000, issued to replace any part of the $1,000,000 of bonds that was first issued?

A. No, sir.

9237 Q. Was any part of those bonds issued to stockholders for stock held by them?

A. It was all issued in that way, sir.

Q. And what stock thus became turned in, so to speak, to the treasurer of the company; what amount of stock?

A. I got my stockholders to relinquish thirty per cent. of their stock, which would make one and a half millions on five millions, and for that thirty per cent. of stock I issued six per cent. bonds in lieu of them, so that when the stockholders brought their stock they received that, and their stock was canceled, thus making three and a half millions instead of five millions.

Q. That was, in effect, a distribution of one and a half million to those stickholders?

A. Yes, sir.

Q. You have now stated all the securities representing the properties of the company that have been issued, and that are now outstanding?

A. Yes, sir; that is my conviction.

Q. Now, will you please state the real property that is owned by the Mutual Company, and how long it has been owned?

A. You refer to the real estate?

Q. No, sir, the location and what it is?

A. The first purchase we made was from Avenue D to the pier-head line of East river, between Eleventh and Twelfth streets, which were 206 feet front by about 800 feet to the pier-head line; the second purchase was that property known as the Novelty Iron Works, that extended adjoining this lot, and also a piece on the westerly side of Avenue D, extending west 440 feet by about 206 feet, making two blocks and a half of a block about.

Q. These are still owned by the company?

A. Yes, sir.

Q. That is all the real estate?

A. Yes, sir.

9238 Q. Has any been sold since it was originally acquired?

A. No, sir.

Q. Can you state the cost of the real estate to the company?

A. Well, sir; I think it was about $880,000 as near as I can remember.

Q. Eight hundred and eighty-two thousand five hundred and fifty dollars?

A. I think so.

Q. Can you state what was the actual cost of the works which your firm constructed, and for which the stock to your firm was issued?

A. No, sir.

Q. Can you state approximately?

A. You mean what the cost was to the contractors?

Q. Yes, sir.

A. I think the contractors got about $1,500,000 out of each profit, counting the stock at fifty cents on a dollar.

(By the CHAIRMAN:)

Q. They got two and a half million dollars?

A. That was the proceeds from the sale of the stock.

Q. Do I understand you that that was about $150,000 more than it cost to build it?

A. Something like that; I could not be positive; of course, we made a fair profit; we did not build for glory; we made a fair contractor's profit.

Q. What amount of money has been spent in increasing the capacity of those works since that time?

A. A good deal; I could not say; Mr. Yalden has all the figures, and I am perfectly willing to give his figures, his testimony.

Q. Then the amount shown by the books to have been expended since that time went, according to your testimony, for the increase in the producing capacity?

A. Yes, sir, and for improvements; I always tried to keep in advance in the newest plans or method of gas making.

Q. The present capacity of those works is about what?

A. I suppose I could make five or six millions of feet there in twenty-four hours.

9239 Q. Are the works not capable with a small expenditure, so as to increase that capacity very largely?

A. Yes, sir.

Q. As a result of your practical experience, what would be the approximate cost of increasing that capacity there?

A. I will say, to bring that capacity to eight millions of feet, from $1,000,000 to $1,200,000 would do it.

Q. One million to one and a quarter million would make four million cubic feet of gas more?

A. Yes, sir; I say that to venture; though I never figured it.

Q. What would it cost to duplicate your present producing capacity at the place of production?

A. To duplicate what we have got now it would cost considerable less than when it was built; they were built on the top wave when everything was the highest, just after the war; every thing was very high at that time, labor and materials; the company that succeeded took advantage of low prices.

Q. Is it not a fair statement to say that your present producing capacity, at the place of production, could be duplicated now at from sixty to sixty-five per cent. of its original cost to your company?

A. Not so wide a difference as that.

Q. Well, at seventy per cent.?

A. I would be willing to say eighty per cent.

Q. You think, do you not, it would be considerable less than eighty per cent.?

A. No, sir; twenty per cent. is a great deal on an amount of that kind.

Q. Is the daily product now five million?

A. No, sir; three million; when I say five million I mean a maximum figure; I think I would be safer to put it at four million; I would like to put it at four million instead of five; the works as they now stand.

9240 Q. So that, as we understand your testimony, the present maximum producing capacity is about four million cubic feet per day?

A. Yes, sir.

Q. And that that capacity is capable of being about doubled by the expenditure of about one million to one and a half million dollars?

A. Yes, sir.

Q. As we understand your testimony, the total amount that has been expended in constructing the works which are capable of the present producing capacity, is covered by the following moneys, viz.: two and a half millions, the proceeds of stock awarded to contractors, and one million dollars in bonds, making in all three and a half million dollars, to which should be added the sum of six hundred thousand dollars subsequently spent for betterments on the property, making in all for the present cost, as it now stands four million one hundred thousand dollars?

A. Yes, sir.

Q. Now that item of six hundred thousand dollars for betterments, which you have mentioned; is it or is it not for the purpose of keeping the property in repair and good working condition, or improving it from time to time so as to keep it up to the necessities of the business?

A. No, sir; the bulk of that was expended for street mains and enlargement of the works and alterations of the works; I made gas of almost every kind of process in order to get the acme of the matter, and it has cost us a great deal of money; and it would be impossible for me to tell just how it was spent; the repairs of the works, of course, have to go on from month to month.

Q. You would not call any part of that item expense account?

A. I think that would be called construction.

9241 Q. You would not call any substantial part of that item substantially an expense account?

A. No, sir; construction account, permanent construction.

Q. This expenditure that you have just spoken of, this last item has been accomplished from the earnings?

A. Yes, sir.

Q. Upon a plant of a producing capacity of about four million cubic feet per day such as you have described, what would be a fair percentage of annual expense to keep it in running order as a going concern, or what should be allowed, by way of depreciation, as representing such an expense, in your opinion?

A. I think ten per cent. would cover it, sir.

Q. As a matter of fact, how have you found it in your experience of ten years with that particular company?

A. I could not answer that, sir, intelligently; I presume Mr. Yalden's account there would show that.

Q. You have, of course, seen the tables that were prepared last spring, by Mr. Yalden, the expert, which were before incorporated in the report of the former Senate Committee?

A. Yes, sir.

Q. By those tables it appears that there was expended or written off as depreciation concerning the works of the Mutual Company, from the year 1876 to the year 1884, in all, the sum of $616,341.43. Have you found any inaccuracy in these figures?

A. No, sir.

Q. That is for nine years, and is, therefore, correct, is it not?

A. I think so, sir.

Q. Now, Mr. Yalden, if you will give us that percentage, it will be convenient at this place in the testimony?

A. The fact is we did not criticise Mr. Yalden's work but took it for granted that it was all right.

9242 Q. Assuming that to be correct, it was proper that the depreciation was about fifteen per cent.?

A. Whatever it is, is correct; I was only, of course, approximating to it.

Q. I make it about fifteen per cent., the depreciation; that which was expended in repairs or written off?

Mr. YALDEN: I make it between fifteen and sixteen per cent.

A. I did not think it was so much as that; I thought it was about ten just from my impression.

Q. Assuming those figures to be correct, it would appear that there had been expended for the purposes of keeping the plant in run-ing order, or appropriated for that purpose by way of depreciation written off, a sum about equivalent to fifteen per cent. per annum on the actual cost of the plant?

A. Yes, sir.

Q. As a man of experience in manufacturing gas, isn't that a fair item to allow for depreciation of expense, in considering capital, and profits and cost of production, about fifteen per cent.?

A. I think so.

Q. It would not be safe to go much under that for any practical purpose?

A. I do not think it would, for I hold I have conducted my business very economically.

Q. Then you must have some opinion as to how the economies of other plants have been conducted, if you think yours has been conducted very economically.

A. Well, sir, the fact is, I have had so much to do to attend to my own business, I have not given much attention to my neighbors.

Q. Why have you an opinion that your business has been conducted economically in that respect?

A. For the reason that I am a practical constructor of gas
9243 works and I attend to every detail of the business myself; that is what I mean by that.

Q. If your producing works and the operations of your company had been united with the other constituent companies and formed a part of the consolidation, is it your opinion that that business would have been conducted any more economically?

A. I wouldn't like to say.

Q. Is that item of fifteen per cent. likely to be more economically conducted?

A. That would depend upon whether the consolidated companies reduce the number of their works; the depreciation would be less.

Q. If they did not?

A. I do not think it would be any less, sir.

Q. In fact, so long as the production of gas continues at the various works of the constituent companies which were established before the consolidation, the item of depreciation or expense of keeping the works in running order, is likely to be substantially the same as it was before the consolidation?

A. Most undoubtedly.

Q. You have schedules prepared for consolidation?

A. Yes, sir.

Q. Where are those schedules?

A. I have them somewheres, sir, among the archives of the office.

Q. Will you send them so that the committee can look at them?

A. Yes, sir.

Q. What candle power of gas did your company produce in 1880 about?

A. Well, sir, I think we made at that time our gas—I wouldn't be sure though; I think we made about twenty-five or twenty-six candle gas; the company made gas then from Virginia pine wood and naphtha and coal; subsequently I changed it to water gas.

Q. When was that change made?

A. About that time, sir, in 1880.

9244 Q. Active competition about that time?

A. Yes, sir.

Q. Your company was engaged in it?

A. Yes, sir.

Q. You competed with the coal gas companies?

A. Yes, sir.

Q. The Manhattan and the New York?

A. Yes, sir.

Q. The price of gas went down?

A. Yes, sir, very seriously.

Q. It was kept up by the pool afterward?

A. Yes, sir; after a fight there is always a settlement.

Q. From 1879 to the consolidation, was it not?

A. Yes, sir.

Q. Without that truce your company could have served your customers with gas at a much less price than was actually charged and with profit to the shareholders?

A. Well, I do not think I would like to admit that.
Q. You cannot help admitting it, if it is true?
A. At that time I was paying my stockholders six per cent.
Q. If that is not true, you can say so?
A. That would depend upon the amount of dividend.
Q. Do you really depend upon the amount of dividend?
A. Yes, sir.
Q. Assuming the stockholders got six per cent. dividend on the par value of the stock, couldn't the gas have been furnished by your company, during that truce, at a much lower price than was actually charged?
A. Well, I think it is probable.
Q. Assuming the div-dend should have been paid on the stock, and assuming the stock to have been paid for at fifty per cent. on a dollar, couldn't the price have been still farther lowered?
A. With a small capital, no doubt.
Q. As a matter of fact, the cost of gas to the consumer is
9245 largely dependent, is it not, on the rate of dividend, and on the capital on which it is to be charged?
A. That is the whole story in a nut-shell.
Q. Now, with reference to the interest of the consumer exclusively, what advantage, if any, was promised or was likely to accrue, or is yet likely to accrue from the consolidation of the constituent companies into what is known as the Consolidated Gas Company?
A. You are putting me in a hole, asking me such questions as that; I do not want to criticize my neighbors; I run my own machine, and I am willing to let them run theirs; I do not like to express my opinion, if I can evade it.
Q. You will please observe that my question used the word exclusively, so as to call for your opinion solely with reference to the interests of the gas buyers, and not to the holders, of its securities; the question relates exclusively to the interests of the gas consumers, and I cannot see why you hesitate in that respect?
A. I do not think it requires any great stretch of talent to answer that question.
Q. Now, with reference to the interests of the consumer exclusively, what advantage, if any, was promised or was likely to accrue, or is yet likely to accrue, from the consolidation of the constituent companies into what is now known as the Consolidated Gas Company?
A. I do not think it would be to their interest.
Q. Is it not really to the interest of the Mutual Company, as an apparent competing company, to maintain the integrity of the Consolidated Gas Company, in order that the price fixed by it may likewise be maintained. This question relates to those interested
9246 in the stock of the Mutual Gas-light Company, and asked with reference to their interests in your opinion?
A. No, sir; I don't think so.
Q. Why not?
A. Because we have no interest with them at all, in any way, shape or manner, except as would naturally be between different companies in the same business.

Q. Is it not the interest of the Mutual Gas-light Company's stockholders that the present price of gas should be maintained?

A. Of course it is.

Q. So long, therefore, as it is necessary to include in the cost of gas an item sufficient to pay a dividend on $39,000,000 of capital instead of a previous capitalization in the same companies of $17,000,000, that company is not likely to reduce the price of gas?

A. No, sir.

Q. So long, therefore, as that company maintains the present price of gas, it is not likely, is it, that the Mutual Gas-light Company will voluntarily reduce its price?

Q. Nor the Equitable Company?

A. No, sir.

Q. So that the practical operation in the city of New York, of the Consolidation, is that the price of all the companies would be maintained equivalent to the Consolidated Company's price?

A. Why, certainly.

Q. The net income of the Mutual Company is no less this year than it was last year?

A. Yes, sir; very much less.

Q. Is the gross income less?

A. Yes, sir.

Q. The price of gas is different?

A. Yes, sir, but our business is falling off by reason of that Equitable Company.

Q. But not by reason of the Consolidated Company?

A. No, sir.

Q. The Equitable is in your territory?

A. Yes, sir; my pipes extend from Bowling Green to
3247 Sixty-seventh street on the North river and on the East river.

Q. There is no limit of territory?

A. No, sir.

Q. Under your contracts with the city, if you have any, and under your legislative organization, there is no restriction of the Mutual Company?

A. None whatever.

Q. Your outstanding bonds of $1,296,000 will fall due in a year or two?

A. They are five-twenty bonds; if they are called in during the first five years, we pay five per cent. premium on time; if they allow them to remain until the expiration of five years, we can call them in at pleasure at par and interest.

Q. You stated a moment ago where your pipes ran in the city. Where did you get the right to do that?

A. From the board of aldermen.

Q. Do you pay any thing for those rights now?

A. Only in the shape of taxes; we pay about $70,000 a year taxes.

Q. You pay nothing for the right of way on the streets?

A. No, sir; none of the companies do that but the Equitable.

Q. The Equitable is the last contract that was made?

A. Yes, sir.

Q. And it is the only corporation that pays for the right of way?
A. Yes, sir.
Q. It is the last contract of any kind that has been made between the city and gas company?
A. Yes, sir.
Q. Now, it appears that with the price of gas as it did exist up to this year your company, in addition to paying its dividends, accumulated a surplus of about $3,130,000?
A. I am not aware of that, sir.
Q. Or a sinking fund or credit to profit and loss account, as you may choose to style it, isn't that the fact?
A. I think that must be a mistake.
9248 Q. The surplus earnings was three millions and something, last spring, after paying the dividends?
A. Oh, yes, that is probable.
Q. Then, there is a sum of about $3,130,000 which represents earnings after paying dividends?
A. Not after paying dividends.
Q. Yes, after paying dividends; that includes the investment?
A. I have got it now; that is correct.
Q. And part of that sum is invested?
A. Yes, sir.
Q. About how much is invested in United States bonds?
A. Eight hundred and thirty thousand dollars.
Q. The balance is how invested?
A. The balance must be in the works.
Q. The general assets of the company?
A. Yes, sir.
Q. You remember the rates of your dividends for the last few years?
A. Yes, sir.
Q. The last three years?
A. Ten per cent. on $3,500,000 capital in addition to the interest on the bonds; the two together would be about eight per cent. on the capital; we paid ten per cent. on the stock and six per cent. on the bonds.
Q. What you paid on the bonds is charged into the interest account and is thus written off before this item of surplus earnings is stated?
A. I fancy so.
Q. You recognize the copy of an account which you handed a former committee and which has not been printed?
A. Yes, sir.

9249 By Mr. TREMAIN: Which is as follows:

INCOME ACCOUNT.

DR.

To net earnings	$7,756,627 64

CR.

By interest	$786,321 04
Bonds paid first series	1,000,000 00
Mortgages paid	397,500 00
Construction	986,682 45
Dividends	3,525,000 00
New bonds bought	204,000 00
U. S. governments bought	812,152 71
Gas stock bought	14,626 00
Sundry accounts due us	3,784 27
Cash on hand	26,561 17
	$7,756,627 64

Q. That investment is more than $800,000 in government bonds is it not?

A. Eight hundred and twelve thousand dollars.

Q. There is another item, $204,000.

A. Those are our issue that we retired; that $204,000 was a part of that $1,500,000; that is the redemption.

Q. What else is there?

A. United States governments, $812,152; we have now $830,000 at par.

Q. What other investment is there?

A. We have $14,626 of our own stock.

Q. The par value of what?

A. That is it; when I made the exchange I found it necessary to buy some stock and we had that over.

Q. With the present current earnings, the bonds outstanding of your company are capable of being paid off, are they not, in view of your present investment holdings by the year 1887?

9250 A. Yes, sir; that would be the expiration of five years.

Q. And there would be left an outstanding share capital nominally amounting to $3,500,000 upon which dividends would continue to be paid?

A. Yes, sir.

Q. Assuming a dividend of ten per cent. upon such share capital account and earnings at the present price of gas, $1.75 per thousand feet, there would, in a few years, be a very considerable accumulation of money or funds, unless there was a serious falling off in the account of the Mutual Company's business, or else a very serious increase in the material and labor?

A. Yes, sir.

Q. In the absence of those contingencies it would not take but a few years to accumulate your capital over again of $3,500,000?

A. I don't know about that.

Q. Is not that the inevitable logic on the basis of past business?

A. Yes, sir; at past prices but not at present prices.

Q. At present prices of gas, isn't that so?

A. Half a dollar in one case and seventy-five cents in another is a very serious inroad to profits.

Q. There has been no increase in the cost to the Mutual Company of producing its gas since last spring?

A. No, sir; none whatever; if you will notice by my account you will see that every year I have been reducing the cost of production.

Q. You have it as low as forty-five cents in the holder?

A. Yes, sir; that is a point that puzzles every one and misleads them.

Q. We don't care for that; if there is any thing that should really be explained to render the situation different than what was reported upon before, I have no doubt that this committee would give attention to it; wasn't the accounts put into the last committee so

9251 analyzed as to give the cost of producing it per thousand?

A. Yes, sir.

Q. The cost of manufacturing and putting it into the holder is one thing and the cost of distributing it is another?

A. Yes, sir; the public will hear people say that gas can be made for fifty cents per thousand; they say that is what it costs the company; they ought to add the cost of distribution which is greater than the cost of production.

Q. Is the cost of collection equal to the cost of distribution?

A. The collection comes into the distribution as a part of the expense.

Q. Are you not aware, in the tables covering ten years' business of the New York Mutual Company, that the cost of distribution for ten years is uniformly less than the cost of gas in the holders per thousand feet? (Referring to page 52, 2d column of the appendix of the last Senate Committee's Report.) You had better give those three items for one year, if you wish to make an explanation?

A. That is correct, because it is taken from the book.

Q. In view of the explanation you have just made, and to correct a misapprehension that exists, it is the fact that it appears by the books that the cost of gas in the holder for the year, for instance, 1884, was forty-six and one-half cents, and of the cost of distribution per thousand feet was forty-one and three-fifths cents and that the amount to be written off for expense and repairs is eleven and seven tenths cents and that the net revenue from gas was $1.36, the total income was $2.36.

A. That is correct.

Q. You were a member of the pooling committee?

A. I was, sir.

Q. By the minutes of that committee you appear to have

9252 been present at many of the meetings when the subject of consolidation was under consideration?

A. I was, sir.

Q. It appears by a resolution of that committee which was adopted at a meeting held in December, 1883, that a plan of consolidation

had been accepted by the committee and was referred to a subcommittee with power to call in legal counsel, to carry it into effect, and that you was present at that meeting—do you remember it?

A. I think I do, sir.

Q. It also appears by those minutes that you was present at meetings held many months before when the same subject was under consideration?

A. Yes, sir.

Q. How early in those meetings were any plans or schedules of property with a view to consolidation, submitted by any of the members of the committee?

A. The matter of consolidation was brought up frequently, and was brought up early in our meetings; after we had our battle and the truce was offered I was sent for to meet a committee of the other companies with a view to coming to some settlement of our difficulties; and I was appointed on a committee to meet these gentlemen; we discussed the subject of settlement; some time after this a proposition for consolidation was suggested and was considered; but I did not view it with favor, and told the gentlemen that I did not want to enter into that matter; I did not think it was politic to do so; but as I was there a member of the committee, I felt it my duty to see what there was of it, and I acted with the committee in good faith, but prefacing my assent to the matter by stating that what ever I should do or say there should not be binding on my company in any manner whatever; that with regard to going into the
9253 consolidation, with them, I would submit it to my directors, and if they accepted it, all right, and if they rejected, that would be the end of it; I think the active business of the consolidation did not occur until the beginning of the last year, 1884.

Q. Do you remember that there was submitted about that time some schedules of property?

A. Well, sir, it was not at the beginning of the year.

Q. When was it?

A. I think it must have been two or three months in the year, as I recollect.

Q. It was during the spring?

A. I think it was.

Q. When did you first know that an act of the legislature was in contemplation with a view to consolidation?

A. I did not know anything more about it than you did until I saw it in print.

Q. Did you see it in print before September 29, 1884?

A. I think I did.

Q. Where?

A. I think it was published in pamphlet form.

Q. The act was?

A. I think it was.

Q. Who published it?

A. I do not know.

Q. Where did you see it?

A. I think I saw it in my office first.

Q. In the summer?
A. I would not be sure.
Q. We would like to see that pamphlet, if there is such a pamphlet in existence; have you it?
A. I do not believe I have; I am not quite sure; I can inquire and see.

(By Senator MURPHY:)

Q. Was the pamphlet other than the simple act itself as it appears in the Session Laws?
A. I think so; it was a paper-covered book, about that size.
Q. Very thick?
A. No, sir; about three-quarters of an inch thick; it had some other laws connected with it.
9254 Q. The statute of 1884 was never printed in such a book, to your knowledge?
A. No, sir; I never saw but one copy; it is about three-quarters of an inch thick.

(By Senator MURPHY:)

Q. It must have contained other matter?
A. I never knew anything about it until I saw it in print; didn't know that any such law was enacted.
Q. Whose schedules did you see or did you know were prepared for consideration as early as the spring of 1884?
A. I saw them all.
Q. The New York and all the constituent companies?
A. Yes, sir; all the constituent companies.
Q. Was any conversation had in your presence as to who should appraise those properties?
A. Yes, sir.
Q. By whom?
A. Well, Mr. Rowland for one, made some appraisements.
Q. By whom was the conversation had?
A. We had a conversation about it; all the members of the companies talked about the plant and method.
Q. What, if anything, was agreed upon formally or uniformally in respect to the method of valuations?
A. Well, the method of valuation was like this,—to ascertain the value of each plant, the value of the street mains and meters, and all the appliances.
Q. Was any thing said as to how the value of the works and plant was to be arrived at—take the New York Company—Rowland who valued the plant?
A. The plan was to obtain experts that were competent to value them.
Q. Was any thing said as to the principle of valuation which those experts should follow?
A. No, sir; they were to give what, in their judgment, would be a fair valuation.
9255 Q. And that was a valuation of the plant as a going concern, or in respect to its producing capacity?

A. I mean the latter.
Q. Who said any thing on that subject?
A. Oh, I don't know; we all talked it.
Q. Did Mr. Lees say any thing about it?
A. Yes, sir.
Q. Did Mr. Gawtry say anything about it?
A. Yes, sir; he had his plant to value the same as Lees, and by the same party, I believe.
Q. Did Francklyn say any thing as to the principle of valuation?
A. Well, I don't remember.
Q. Did Mr. Smith of the Manhattan?
A. Yes, sir; he took charge of the Manhattan valuation; he had that done by Mr. Farmer, who was a gas engineer and constructor.
Q. Before those valuations were made, I understand you to say, do I, that there was a general agreement as to the principal of appraisement?
A. I do not know as to that; we had no principle only to get at what would be a fair valuation of the machinery and pipes in the street.
Q. Regardless of cost?
A. Oh, no; we took them at what would be a fair cost; for instance, how would you reckon to make such an estimate; you would put it at what it would cost to put it there, wouldn't you?
Q. Whether the agreement of the men among the parties in interest called for an appraisement of value according to what it would cost to put the plant there, or according to its producing capacity?
A. It was what it would cost to put it there; to duplicate it.
Q. So that to the best of your recollection, the principle of valuation that was united upon by the officers of the constituent companies as a basis was what it would cost to put the plant there?
9256 A. Yes, sir; that is it; then the real estate was appraised by real estate men.
Q. So that your answer to the previous question relating to the plant has no relation to the appraisement of lots as such?
A. No, sir; that came under two different experts.
Q. Have you any knowledge as to whether the valuations of the real estate, so called, were made to include any of the structures thereupon that by law are deemed real estate, but whether it relates exclusively to the value of the lots without structures?
A. To the value of the lots without structures.
Q. That, in fact, was the supposed basis of the real estate valuation, so called?
A. Yes, sir.
Q. And the basis of the valuation of the plant was what it would cost to duplicate it?
A. Yes, sir.
Q. When you speak of what it would cost to duplicate, do you mean what it would cost for a plant equivalent to the plant to be appraised?

A. No, sir, to duplicate every thing as it was without reference to any thing else.

Q. Without reference to whether it was really necessary to produce a given capacity or not?

A. Yes, sir.

Q. And without reference to whether the plant, or any part of it, had been superseded or rendered more or less useless by reason of the change in the method of production?

A. Yes, sir.

Q. So that the properties that were laid aside as useless, or comparatively so, caused by the change of production in the same works from coal gas to water gas were to be appraised or valued according to what it would cost to duplicate them as they stood?

A. Just as they stood.

9257 Q. In your opinion, would that be a fair way to buy a gas plant for present actual business purposes?

A. No, I don't think it would; if I was going to buy one, I should want to get a modern one, of course.

Q. In your opinion, would that be a fair method of arriving at the value of a gas plant?

A. Everything that was appraised there was competent to perform the service; nothing that was thrown out as useless was appraised; everything that was appraised was an absolute gas-producing machine in some way or other.

Q. The question is not quite answered yet?

A. Your question was whether there were any articles appraised there that had become obsolete or useless for the purpose of gas making?

Q. No, sir; I understood you to say that the basis of appraisement or valuation was to appraise or value all the properties regardless of their present usefulness in producing gas so long as they are found to exist as part of the plant, either coal or water gas producing works, and that they were to be appraised according to what it would cost to duplicate them instead upon the principle of what it would cost to duplicate works adequate to give a producing capacity by more modern construction?

A. That was the principle.

Q. Whether as a practical experienced man, you can give this committee the information that such a method is a fair method of determining the actual values of a gas producing plant?

A. I don't know of any other way to answer the question but this, that if I was to appraise property of that kind, with a view of purchasing it, for the purpose of making gas, I should purchase that of the most modern type of machinery for that purpose.

9258 Q. If you were valuing it for the purpose of purchasing you would not value it on any other basis than the basis you have just now stated?

A. No, sir.

Q. Is there any other fair basis for an actual valuation, in your opinion?

A. Well, that I am not prepared to say, for this reason, take, for

instance, coal gas, just now, at this present time, rather old-fashioned. Now, the plant of the Manhattan Company is perhaps as fine a one of the kind as exists, and I must take this view of it, that should this naphtha which we are now using give out—and there has been a great deal of speculation on that subject, whether it would hold out—the companies would be obliged to go back to making coal gas; and in that event, then the Manhattan works would be as good as any other. You see the dilemma I am in to answer that question.

Q. If that should occur, what do you say as to the plant of the Manhattan?

A. The plant of the Manhattan would have a large value, for this reason, that they can be converted into a water gas works, and almost all the appliances used excepting a very small percentage of them; I could take those works and convert them into water gas works for a very few hundred thousand dollars.

Q. You know that that was done in the New York Company for about $600,000?

A. I do, and I would like to have had the contract.

Q. That included the patent?

A. And then I would like to have had the contract. The Manhattan works would not be useless for the reason that every thing pertaining to them could be worked in—gas holders, purifiers, scrapers and exhausters, all of which would be necessary.

Q. To appraise that property at its fair actual value, would you, as a practical man, apply any other basis or principle of valua-
9259 tion than the basis you have stated of what it would cost to produce a given quantity of gas per day?

A. No, sir.

Q. Now, applying that as a basis and exclusive of the mains, meters, valves and services, and referring only to the works proper, so to speak, as a plant of a producing capacity, in your opinion, was the fair actual value of such a plant as the Manhattan, $400,000,-000?

A. Well, sir, I looked over the schedules at the time; I looked at them all and I thought it was a very fair appraisement of the value of the plant; that is, with a view of duplicating it.

Q. That is, with a view of buying the things and placing them there?

A. Yes, sir.

Q. Upon the basis of duplicating the capacity of the works, do you answer the same?

A. Yes, sir; it would amount to the same thing.

Q. Do you mean to say that, as a practical man, to purchase the property you would give a valuation of the plant of the Manhattan of $4,000,000 or thereabouts?

A. Well, I don't remember the valuation, sir.

Q. Or in other words, near that amount?

A. I remember a comparison was instituted of the various plants; they were all read over and discussed.

Q. As early as the spring of 1884?

A. I think it was, although I wouldn't be certain. It took a long time to get the thing up.

Q. What do you say of that as an appraisal to purchase the value of the plant of the Manhattan upon the basis of its producing capacity, to furnish the gas; say either $4,000,000 or $3,000,000?

A. Well, everything was taken separately—gas holders were taken at so much apiece, and tanks, etc.

Q. Strike that out, Mr. Stenographer?

9260 A. It would be impossible for me to approximate to an amount so large as that; I could not answer that question. I could only say that the companies were all estimated upon the same basis of valuation.

Q. That basis was on what it would cost, estimating material and stuff on hand?

A. Yes, sir.

(By the CHAIRMAN:)

Q. That might be a very different thing, getting at its real value, as a purchaser would look at it?

A. Yes, sir.

Q. All you were looking after was to get it relatively right?

A. Yes, sir; compare my own with the others.

Q. To see that they were on the same basis?

A. Yes, sir.

Q. The ultimate object was to get it relatively right?

A. Yes, sir; to get it relatively right.

Q. The appraisement was very difficult from a purchaser?

A. Yes, sir; if the company desired to sell out there would be two parties to the affair.

Q. One of which would look to see whether this particular piece of machinery—what it would cost?

A. Yes; and in this case there was only one party.

Q. And he was the seller?

A. Yes, sir; there was no one there to bid them down.

Q. How can this committee ascertain that the prices which the seller fixed for himself, and at which he did sell, was or not a fair price in relation to its actual value?

A. I think it was a fair appraisement; but, whether we could sell it for that, that is another thing.

Q. Fair to each other?

A. Yes, sir.

Q. No one would pay the cost of a thing which has become partially superseded by some better thing?

A. No, sir; those things were estimated fully.

9261 Q. Yes, that is the trouble; isn't there a well recognized rate of capitalization to produce a thousand cubic feet or a given quantity of gas, up to one or two million capacity per day?

A. Well, I have never figured in that way; I know what you mean.

Q. Is there a well recognized equivalent?

A. Well, I think that all companies vary in that; I think the cost of a thousand cubic feet varies just as much as any thing else; you take a plant in New York city and compare it with a plant in Brooklyn or any other provincial town, and it is a very different affair.

Q. You do not live in Brooklyn?

A. I have been an owner in a gas company there.

(By Senator MURPHY:)

Q. You say provincial in speaking of Brooklyn?

A. I said provincial town in comparing Brooklyn, for the reason that men can work cheaper there than in New York city.

Q. What, in your opinion, would be a fair capitalization for a plant to produce a given quantity in New York city, say for a plant that would produce four million cubic feet per day?

A. It would be in round numbers, as near as you could make it, $4,000,000.

Q. And what, in your opinion, would be a fair enlargement of that capitalization to produce eight million cubic feet—about one and a quarter more million.

A. More than that, sir; for this reason, that you are to build a plant which is competent to produce four million of feet per day; you would be obliged to duplicate it to make four more million.

Q. But in originally building it, if you had provided for a possible enlargement, it would not cost so much?

A. My plant was amply large and I would not have to
9262 duplicate it to that extent; it is just fitted to four million now, but I have more capacity than that; therefore I stated I thought I could do it for that; that is an opinion; for every thousand cubic feet per day it is a million of dollars as near as you can get it.

Q. In the plan of consolidation, the proposed capitalization of the Mutual Company is set forth at $5,922,000?

A. Yes, sir.

Q. Which included an allowance for so-called rights and franchises, etc.?

A. Yes, sir.

Q. How much in that estimate is included for so-called rights, franchises, etc.?

A. I forget. You have that statement, have you not?

Q. No, sir.

A. I thought you got those schedules.

Q. They wouldn't have this amount; they would have the gross amount?

A. I cannot recall, sir, what it was.

Q. Is *is* not the fact that the amount will be shown by taking the total valuations of your properties from the total share capital allotted to your company?

A. Yes, sir; that would be made a part of the $5,922,000.

Q. Do you remember how that amount was arrived at in this allotment to the several constituent companies?

A. No, I don't.

Q. It has been stated here that it was arrived at, according to the business of the constituent companies, for a designated year, ending in the fall of 1883. Is that your recollection?

A. I think it was, sir; that part of the business I didn't have much to do with.

Q. Because you didn't go into the consolidation finally?

A. No, not that; there was a good many things I didn't know about.

Q. Who did know about them?

A. The other constituent companies.

9263 Q. Who was the prime mover of this consolidation scheme? Who urged it?

A. The Manhattan and New York and Municipal were the active parties in it.

Q. Did you know about the legislation of 1883, in respect to the necessity of securing two-thirds of the property owners on a street before you could obtain authority to open it?

A. No more than what I saw in the papers.

Q. Did you know of that legislation?

A. I do not know whether I did or not at the time.

Q. Was it talked of in the pooling committee?

A. No, sir.

Q. When did you first hear the proposed capital of $45,000,000 named?

A. That was ascertained after the schedules were made up.

Q. When did you first hear that figure named?

A. I think that was during the summer of 1884.

Q. Who first named it?

A. I do not remember.

Q. Wasn't it Francklyn or Smith?

A. It was either or both; I do not remember which.

Q. Was it ever debated at all?

A. Yes, I think it was considerably debated.

Q. Who made the suggestion that the amount should be different than $45,000,000?

A. I do not recall, sir.

Q. Name any of them who did object—if anybody?

A. Well, sir, if I remember right, Mr. Zollikoffer and myself.

Q. What was the objection to that capitalization made by you?

A. There could be only one objection to it, that was, too large.

Q. There is another objection; it would be too small?

A. There is not much danger of that.

Q. Anybody else object that it was too large?

A. No, I don't remember, sir.

9264 Q. Did anybody from the New York Company object that it was too large; did you ever hear an objection from that company to that, that it was too large?

A. I don't remember.

Q. Anybody from the Manhattan?

A. No, sir.

Q. Or Municipal?

A. No, sir.

Q. Was there anything said about the Knickerbocker properties in any of those conferences?

A. Yes, they had their schedules the same as anybody else.

Q. Was there any thing said about their value in gross?

A. If I remember right, I think there was.

Q. Who participated in that discussion?
A. Well, these discussions were held as the schedules were presented and made pro and con.
Q. What objections did you ever hear made to the Knickerbocker properties in valuations?
A. Well, simply that they were pretty well set up.
Q. Were they defended against that accusation?
A. Yes, sir.
Q. Who represented them?
A. I think Mr. Day did.
Q. What did he say about them?
A. I don't recall; the matter went out of my mind; what I remember of it now is just by recalling it.
Q. Did anybody say in the course of that discussion, that the Knickerbocker property was only of a nominal value above its debts?
A. I do not think they did.
Q. Are you aware that in the returns to the tax office the Knickerbocker Company for years successively stated that fact?
A. No, sir.
Q. That circumstance was not alluded to?
A. No, sir.
Q. Well, you know the Knickerbocker properties, do you not?
A. Very well; I looked it over once with a view to purchasing it.
9265 Q. Will you tell the committee what you offered?
A. I made no offer.
Q. When was it?
A. Several years before it came into their possession; it lay idle for several years, unfinished.
Q. You saw them after they were finished?
A. They were not completed; I saw them when the Union Company was running them.
Q. You know the Municipal spent money on those works?
A. Yes, sir; they spent a large amount of money there; they must have, from the condition of them.
Q. Was any objection made to the valuations in gross of the Municipal Company?
A. I think not; they were of so recent a date; Mr. Rowland who built the works could very readily give them.
Q. Any objection from the Metropolitan Company made by anybody to the valuations?
A. I do not remember that.
Q. Any objections made by anybody from the Metropolitan company to the valuations either of the Manhattan or the Knickerbocker?
A. I think I do recollect that Mr. Zollikoffer objected to the valuation of the Manhattan.
Q. And of the Knickerbocker?
A. Yes, I wouldn't be sure about which company it was.
Q. Were the valuations reduced after his objection?
A. No, sir.

Q. Will you tell the committee why, in your opinion and of Mr. Zollikoffer's, this capitalization of $45,000,000, was too large?

A. I couldn't answer for M-. Zollikoffer, but I can for myself; I did not think it was a politic move to make; the best proof of my sincerity in that was reducing my capital from five millions to three and a half millions; I wanted to reduce my capital down; I couldn't see the propriety of increasing it again.

9266 Q. Your capital was reduced by distributing the earnings among the stockholders?

A. I cannot say that.

Q. That is the pracitcal effect of it?

A. They relinquished the stock.

Q. The bonds were to be paid out of the earnings?

A. Yes; the stockholders were entitled to the bonds; they had one and a half millions of stock which they relinquished for one and a half millions of bonds.

Q. The money came out of the earnings to replace it?

A. I suppose so.

Q. You reduced your capital by distribution of the earnings, wasn't it practicable, in your opinion, to have reduced the capital of the constituent companies instead of increasing their nominal share capital at the time of consolidation upon the same method that you reduced yours?

A. Certainly; there is no other answer to that question but that.

(By the CHAIRMAN:)

Q. In your opinion, increasing the candle power of gas has what effect upon its value to the consumer?

A. You mean as between high candle power and low candle power?

Q. Yes, sir.

A. Approximately the advantage to the consumer is in the ratio of the candle power; not exactly but approximately.

Q. For practical purposes it is so nearly enough, isn't it?

A. Yes, sir; there is something behind that; the specific gravity of high candle power gas produces a slower passage through the burner than that of a low candle power gas, and the difference in economy is approximately as the difference of the candle power, besides the increased illumination.

Q. The gas spends itself less rapidly and at the same time produces a better light?

A. Yes, sir.

9267 Q. Then, to the consumer there is the further advantage of its requiring fewer burners?

A. Smaller bills is the grand result; that is what I have been working for in this city for a great many years to make the best light attainable and to make the smallest bills to the consumer.

Q. Do you think it is right to charge consumers the same price for gas without any regard whatever to its illuminating power?

A. That is a difficult question to answer; I do not think that the two gases are worth the same money by any means, but the public

will burn whatever gas they please, and it will take pretty good machinery to make them see the difference.

Q. If you wanted to start gas in this city anew, how many gas works would you have for the entire city?

A. Not to exceed three manufactories; in fact, if I was going to furnish gas for this city, and I could do it in my own way, I would build works on the other side of the Harlem river where land is cheaper, and make all the gas there and send it through the city; I would have a main artery to bring the gas down into these various gas holders for distribution, and take down the old works and dispose of the property.

Q. Can you tell us about the daily consumption of gas in New York?

A. I think the consumption of gas in New York is about five thousand million feet now per annum.

Q. The daily consumption?

A. That varies every day.

Q. The average as near as you can estimate it?

A. I should have to do considerable figuring to work out that problem.

Q. Thirteen and one quarter million of feet per day?

A. Something like that.

Q. You incorporate that as being an approximate statement?

A. Yes, sir.

9268 Q. The answer is about thirteen and one-half millions per day or thereabouts?

A. Yes, sir; let me think a moment; well, it would be somewhere there, thirteen to fifteen millions probably.

Q. Now, by increasing the capital employed by your company by $1,220,000, you could produce daily about eight millions, could you not?

A. Yes, sir; but you must observe that if you take the average of fifteen millions daily consumption, in the winter time we get up to twenty-five or thirty millions; so we must have a plant equivalent to make the maximum.

Q. Will you re-cast that in your mind and see—you would want four plants of eight millions each to do it?

A. Yes, sir.

Q. Four plants of eight millions each would supply the city of New York?

A. Yes, sir; I think it would.

Q. And with reasonable regard to the future requirements of the city?

A. Yes, sir; my plant I said could be increased for one and a quarter million or thereabouts approximately; now if you was to construct a new plant, you couldn't do it for that.

Q. Couldn't you construct one that would produce eight million cubic feet per day, and that with the cost of the work mentioned already?

A. I think so; you could do it more economically still if you put it all in one plant.

Q. Would this not be approximately correct, namely, that a capital

of five million dollars would be adequate for gas works that would produce eight million of cubic feet per day?

A. I am under the impression that my works cost four million dollars.

Q. Would this not be approximately correct, namely, that a capital of five million dollars would be adequate for gas works
9269 that would produce eight million cubic feet per day?

A. Yes, sir, approximately so.

Q. Then, if there were four gas works of the same capacity, each having a capital of $5,000,000, it would be fair to say that the city might be supplied with gas upon a capital of $20,000,000, approximately?

A. Yes, sir; with new construction.

Q. A moment ago, you said this could be more economically—state how?

A. You understand with one plant, instead of four, it saves the expense of officers, foremen and overseers, which would be very much less; there would be a great economy there.

Q. This capital stock would be very much reduced by having one instead of four works?

A. Well, that is my impression.

Q. Now, what do you say about this; does the increase of the candle power of gas increase the quantity of smoke?

A. Yes, sir; you can go too far with the operation; I think that thirty candles is the limit.

Q. Up to thirty-candle power gas, is there any difficulty with smoke?

A. No, sir.

Q. Is that so with coal gas?

A. It is very risky to go to twenty candles with coal.

Q. When you say you may go to thirty, you refer to water gas?

A. Yes, sir.

Q. What is there to prevent the Mutual Company from enlarging again its capital from $3,500,000 to $5,000,000?

A. Well, I don't know any thing, sir, unless it would be a very stupid thing for them to entertain such an idea.

Q. If they had the surplus, they might do it?

A. They don't anticipate anything of that kind; they do not get the idea from me at all events.

Q. Under your charter, you may go up to $5,000,000?

A. Yes, sir.

9270 Q. I call your attention to section four, of chapter 651, of the laws of 1866, passed April 17th, 1866, and ask you what, if anything, has been done by your company in respect to distributing among those customers who are your stockholders any excess of the earnings above the sum of ten per cent. dividend on the capital?

A. I have not arrived at that point yet.

Q. Why?

A. I think the section there explains that; the words of the section, I think, explain that.

Q. Do you mean to say, in your opinion, that the finances of the company have never made the section applicable?

A. I do.

Q. Previous to the last issue of bonds, was not the section applicable?

A. No, sir; we were not earning ten per cent. then.

Q. Were you not earning more than ten per cent. during the periods you have accumulated from earnings a surplus of the sums already testified to?

A. We had not paid off our indebtedness; we never paid the stockholders to exceed ten per cent.

Q. If you had paid the ten per cent., however, upon the stock at the rate of fifty cents on a dollar, and no more, the section would have applied?

A. Yes, it would have been very different; but it was not so ordered; I would be only happy to divide that surplus when I can get to it.

Q. Will you please explain a little more in detail to the committee why that section is not fairly applicable, if in fact, there were any consumers who were stockholders?

A. That section, I think states that after the works are paid for—indebtedness paid, that any surplus over ten per cent. earned by the company, should be divided among the stockholders and con-
9271 sumers half and half, but we have never reached that point as I understand it.

Q. If the basis be taken to be ten per cent. on the $2,500,000 stock, as a total gross capital and no more, that point has been reached?

A. I should think so.

Q. Then, what interpretation has your company practically given to that section of the statute which reads "whenever the profits shall exceed in any year the sum of ten per cent. upon the whole capital stock of said company"?

A. You want to read the context to that.

Q. I am asking what interpretation your company has practically given to that section?

A. We do not give it any; we did not suppose the time had arrived.

Q. Have you had any written opinions from counsel on that subject?

A. I do not think we have had any written opinions.

Q. Well, if the bonds which were issued to your stockholders when they surrendered thirty per cent. on their holdings, and which bonds were either paid or to be paid out of the current earnings, if you leave these bonds out of consideration, under this section, even then, would it not be applicable?

A. Our stockholders assented to this reduction of capital; they had their choice and they elected to have the capital reduced.

Q. You understand the question?

A. The capital then would remain $5,000,000; I suppose that could have been done but it never was voted. The stockholders, at

my suggestion, thought it was a proper move to make, to reduce our capital so that we could be in a condition to sell cheaper gas.

Q. But in reducing it an indebtedness was created which must be paid before that section 4 of chapter 651 of the Laws of 1866, becomes applicable?

A. Yes.

9272 Q. Even conceding that the indebtedness so created is entitled to be considered and deducted before this section shall become applicable, then if the capital shall be taken at $2,500,000, instead of $5,00-,000, would not the section be applicable, in your opinion, so as to divide something among consumers?

A. That is if our capital was still further reduced.

Q. Yes.

A. In that event there would be a surplus, of course, of over ten per cent.

Q. Has this subject ever been considered by your officers or any of your board of directors?

A. I do not recall; it has been referred to, but our understanding of the section is as I stated.

Q. Has any claim been made in your company by any consumer under this section?

A. No, sir.

Q. Or by any stockholder?

A. Not that I am aware of.

J. PIERPONT MORGAN, a witness, called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You were the holder of $50,000 of bonds of the Knickerbocker Company at one time, were you not.

A. Yes, sir.

Q. Do you hold those bonds yet?

A. No, I do not.

Q. At what time did you procure them?

A. In 1879.

Q. What month?

A. I think it was November.

Q. Of whom did you procure them?

A. My impression is I took them from Bayard Cutting, although I might have taken them from Mr. Stephens; I don't remember who the party was.

Q. Did you pay money for them?

A. I paid money for the stock and bonds; I think I had stock at the same time.

9273 Q. I am asking for bonds only; you had also 500 shares of Knickerbocker stock?

A. Yes, sir.

Q. Did you have any more?

A. No, sir.

Q. When did you procure those shares, at the same time and of the same person?

A. My remembrance is that I did.
Q. Was it all one transaction; I so understand it?
A. Yes, sir.
Q. Now, in money, how much did you give Mr. Cutting for those bonds and that stock?
A. Fifty thousand and odd dollars.
Q. Did this sum exceed the par value of the bonds and interest to the time of the transaction?
A. I think it did somewhat.
Q. How much?
A. I could not tell you; I have not got the bonds, and I could not tell what the calculation was.
Q. Who made the negotiation with you for the transaction?
A. I think it was Mr. Stephens.
Q. The transaction was closed with Bayard Cutting?
A. That is my impression as I remember it, although it may have been paid to Mr. Stephens; now, I am not certain.
Q. Give your best recollection of the entire transaction?
A. That is what I have done, as I remember the transaction.
Q. Give us the figures, as near as you can recollect?
A. Fifty thousand and some dollars; I think it was about $53,000 or $54,000; about $54,000.
Q. Was not this $4,000 interest?
A. I think it was; very likely; I cannot tell now what it was.
Q. What was the arrangement made, in consequence of which you received 500 shares in addition to your investment?
A. I held 500 shares in the old company prior to that reorganization.
Q. In the Union Company?
A. I think so; the transaction, as I remember it now, the
9274 result; it came to on account that I had the stock of the old company.
Q. The stock of the old company was worthless because the property was in the hands of a receiver and the stock valueless?
A. No, I did not understand it was valueless, but it was in the hands of a receiver.
Q. Did you not know at that time the stock of the Knickerbocker was valueless?
A. I did not know that either.
Q. What did you pay for the Union stock that you had?
A. Fifty cents.
Q. How long had you held it?
A. Several years.
Q. Were they 100 odd shares?
A. I so remember it; yes, sir.
Q. You understood that those bonds which you were getting at that time were secured by a mortgage?
A. I think I did; I don't recollect now whether I did or not.
Q. How long did you hold the bonds?
A. I held the bonds; there were occasionally one or two paid off and the balance of them I gave to Cutting, I believe, last year or this year, one or the other; he purchased them.

Q. Purchased them at par and interest?
A. Yes, sir.
Q. Who conducted that transaction and purchase?
A. He did.
Q. Did you continue to hold your 500 shares of Knickerbocker stock until consolidation?
A. No, sir; I gave them to Cutting, and I received 116 shares Municipal Gas stock in the place of it, which I sold at that time.
Q. When did you receive the 116 shares of Municipal?
A. I think it was in 1880.
Q. March, 1880?
A. Yes, sir; about that time.
9275 Q. Did you receive that from Cutting?
A. Yes, sir.
Q. Or Stephens?
A. Cutting.
Q. Had he previously made an arrangement with you by which you agreed to surrender that Knickerbocker stock for Municipal stock?
A. I don't remember, but I have no doubt it was so, or I should not have done it; I know nothing of the transaction; only handed it to Cutting.
Q. Did you continue to hold your Municipal stock until after November, 1884?
A. No, sir.
Q. How long after March, 1884, did you hold your Municipal?
A. A few days.
Q. To whom did you sell it?
A. Some one, some broker or somebody took it from me; I do not remember who it was.
Q. Did Cutting ask you to sell it?
A. No, sir.
Q. Who asked you to sell it?
A. No one.
Q. Do you remember what price it was sold at?
A. No; my impression is it was about 130; I do not remember exactly.
Q. Is this the only transaction you had with Knickerbocker or Municipal stock?
A. The only one.
Q. Have you any connection with the Consolidated Company?
A. Not the least.
Q. This is a part of the Consolidated Company; we want to hear the whole transaction, has your firm loaned on the Consolidated Gas stock?
A. It has very likely, we take all stocks which are quoted at the Stock Exchange.
Q. Who in your firm would know?
A. I do not think of anybody, it is a question of call loan; the broker comes in and brings a pile of securities and perhaps, some of that stock might be with the rest.

Q. Who would know if you had?

A. We would have to hunt up the books, we probably have.

9276 Q. Who would know?

A. Nobody without examining the books.

Q. Will the books tell?

A. The books are there.

Q. Will you please cause your books to be looked at and send a memorandum of any loans that have been made by your house on the Consolidated Gas stock as collateral and the dates and amounts since December, 1884; they are not listed until March, 1884?

A. I have made no time loans at all on that kind of Consolidated stock; if any loans have been made on that stock as collateral, it has been to stock brokers, call loans, in which the Consolidated stock was a small integral part.

Q. It would take considerable labor to ascertain that?

A. Yes, sir; the securities of each call loan are recorded on the backs of the envelopes, and they are frequently changed.

Q. If later on we should want them, we would have an understanding about it?

A. If you will send any one to our office I will see that he gets the information that he wants.

Adjourned to December 18, 1885.

NEW YORK CITY,
FIFTH AVENUE HOTEL, *December* 18, 1885.

The Committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain appeared as counsel to the committee.

GEORGE W. DOANE, a witness called by the counsel to the committee, being duly sworn, testified as follows:

9277 Examined by Mr. TREMAIN:

Q. You were the secretary and treasurer of the New York Company?

A. Treasurer, not the secretary; Mr. Clark was the secretary.

Q. In what capacity is Clark acting now?

A. He is chief clerk for the Hester street office.

Q. Under your direction?

A. Yes, sir.

Q. Hester Street Station is the name of the old New York Company's office?

A. Hester Street Branch.

Q. And is now under the direction of the Consolidated Company?

A. Yes, sir.

Q. Are you under an annual compensation?

A. Yes, sir.

Q. State the amount?

A. Four thousand five hundred.

Q. Are engineers' reports made daily to you?
A. No, sir.
Q. Are they ever made?
A. Not to me.
Q. Do they come under your supervision?
A. No, sir.
Q. What do you have to do with it?
A. I have charge of the Hester street office, the collecting of the moneys from the sales of gas.
Q. Have the books been under your direction for many years past?
A. No, sir.
Q. Have you been a member of the board of directors of the New York Company?
A. No, sir.
Q. Have you any knowledge of the financial operations of the New York Company prior to the consolidation?
A. I was the treasurer of the company and custodian of the finances; I must have known all about them, in fact.
Q. Were these schedules of properties of the New York Company prepared under your direction?
A. No, sir.
9278 Q. When, to your knowledge, were any such schedules first prepared?
A. I cannot remember.
Q. More than two years ago?
A. No, I should say it was not so long ago as that.
Q. Who first prepared them?
A. The schedules connected with the list of meters and services and mains was made by some clerk around the office and the memorandum was given to me and I tabulated them and made out the list; it must have been in the spring or summer of 1884.
Q. What else in that respect was done?
A. That is all I know any thing about; the other schedules were not prepared by me or under my direction, and I do not know any thing about those.
Q. To whom did you give these schedules of meters and mains to which you allude?
A. I could not say, probably Mr. Lees.
Q. Did you never see the schedules of the plants of the properties?
A. I don't understand your question.
Q. Did you never see the schedules of the plants of the properties?
A. Well, I probably did, but I cannot state positively; I think I must have seen them.
Q. Who prepared the schedules of the real estate?
A. I don't know.
Q. When was the inventory of the plant taken?
A. I don't know.
Q. As a matter of fact, has it not been the custom of the New York Company for years to keep an inventory of its plant and apparatus?
A. I never knew of any.

Q. You would know if such a thing had existed?
A. I think so; yes, sir.

Q. As treasurer of the company, how did it happen that
9279 schedules of its plant and apparatus were prepared in detail and finally acted upon without your knowledge, if that was the fact?

A. As treasurer of the company, I had no connection whatever with the works, and what schedules were prepared probably would not necessarily come to me; it would probably have gone to the president, and the only schedules I would know any thing about would be those prepared at the office where I was of the meters and mains and services; my duties are connected with those at the office with which I am familiar.

Q. Was there a place in the office of the company anywhere where the inventory of this plant and apparatus was regularly kept?
A. I do not think there was; still there may have been.
Q. The books at the Hester street office would not show such detail?
A. No, I do not think they would; nothing of that sort.
Q. Were you present at any meeting of the board of directors of the New York Company at which the subject of consolidation was considered?
A. No, sir.
Q. Is anything on that subject in the minutes of any of the meetings of the board of directors?
A. I cannot say; I never attended the meetings, and I am not familiar with the minutes of the board.
Q. Where is the book?
A. The minute book?
Q. Yes.
A. I think it must be at the Hester street office.
Q. Will you please send the minute book of the board of directors and of the executive committee up for the inspection of the committee?
A. Yes, sir, to the Chairman.
Q. Do you know at whose request any appraisement of the plant of the New York was made?
A. I should think it would be made at the request of either the president or the directors.

9280 Q. Do you do any thing in that respect yourself?
A. The meters, mains and services.

Q. Was you present when any request was made to have them appraised?
A. No, sir; the list I made out was not a price list, it was a list of the properties without any values attached to it.
Q. Did you have any conversation with anybody in respect to fixing values?
A. I could not say.
Q. Did you do any thing at all in respect to fixing values personally?
A. No, sir.
Q. Did you talk with anybody about it?

A. I might, but I don't remember.

Q. Do you know of anybody having been consulted to appraise the values?

A. I think Mr. Rowland was; I am not sure about it; I think he fixed the inventory.

Q. What do you know about his valuation?

A. I don't know anything about it.

Q. Do you know any thing about the amount that was spent upon the works of the New York Company for improvements, betterments or changes or modifications?

A. I know there were large sums of money spent during the time I have been connected with the company; but I could not say from recollection; the book- show.

Q. They will not show, will they, what it was expended for?

A. Yes, sir.

Q. Will they show the character of all the plant thus acquired?

A. The books will show what every dollar was expended for; of course the pay-rolls don't show what it was paid for in detail.

Q. Has any property at all been sold besides residuals by the New York Company, any kind of property?

A. Yes, sir, scrap-iron sometimes, sold coke and little odds and ends, nothing to amount to any thing.

9281 Q. You mean sales of such parts of the plants as had become useless, do you?

A. Well, if I remember, a set of old purifiers was sold for old iron, and when we take up an old main out of the street, we generally sell them for old iron, nothing of any large amount.

Q. Old retorts?

A. No, sir, never sold any.

Q. When were the purifiers sold?

A. Several years ago; I could not tell you when.

Q. About the time you began to make water gas?

A. I think it was prior to that that those purifiers were put in before that.

Q. You remember when the change was made in that respect, do you not?

A. Yes, sir.

Q. Is the business of the Hester street station carried on now substantially the same as it was before the consolidation?

A. You mean the method of transacting business?

Q. Yes, sir.

A. There has been no change in the method of carrying on the business; it goes substantially as it did before.

Q. Were daily reports made at the Consolidated office of receipts and disbursements?

A. Yes, sir.

Q. On what authority are the disbursements?

A. I don't know of any special authority; it requires no particular authority to make such disbursements.

Q. How is material paid for?

A. It is all paid for from the central office; the pay-rolls are made out and a check is given to me for the amount of the pay-rolls.

Q. Do you have duplicate pay-rolls?

A. No, sir.

Q. Does that increase the labor?

A. Of course, but not the clerical labor; more physical labor is required but not more clerical force.

Q. Do you keep a special bank account for that branch?

A. Yes, sir.

9282 Q. Remit the Consolidated by checks on that branch?

A. Money is deposited to the account of the Consolidated Company.

Q. But no other branch can check against that particular account?

A. We cannot ourselves; I have no authority to draw money out of the bank; all checks are drawn from the central office.

Q. If they are drawn for purposes of disbursing at your office, how do you get the money?

A. The check is drawn to my order, and I take it to the bank and get the money.

Q. The currency?

A. Bills.

Q. What year did you begin with the company?

A. In the spring of 1873.

Q. What were the current monthly expenses of the New York Company prior to the consolidation; about, and what are they now?

A. I could not tell you.

Q. Whether they are now smaller or larger?

A. Larger, because we have a great deal more business to transact; I mean that all the business between Grand and Houston streets has been thrown into our office, from the old Manhattan and Municipal Companies.

Q. That means you have more territory and more customers to look after?

A. Yes, sir; more business and more clerks.

Q. As a matter of fact, you do not have more force now in the Hester street office for the business there than the old New York Company had in conducting its business?

A. Yes, sir.

Q. The expense being about how much there, about one-quarter larger?

A. Not as much as that.

Q. One-fifth?

A. The only difference has been the three book-keepers and two clerks.

JAMES YALDEN, being duly recalled, testified as follows:

9283 Examined by Mr. TREMAIN:

Q. Have you made an examination of the books of the New York Company?

A. I have.

Q. Does your examination cover some of the general features of

inquiry as the examination made of the Manhattan and the Metropolitan of which you have already testified?

A. It does; this company is the oldest in New York and its business was continued for about sixty-one years with uninterrupted success and proved to be very profitable.

It was incorporated in the year 1823 with a capital of $1,000,000. Of this sum $200,000 was paid in shortly afterward. In 1824, 1825 and 1826 further sums were paid in, making a total of $495,000, and in the year ending November 1, 1837, the balance of $5,000 was received, making a total of $500,000.

In the following year a further $250,000 was paid making a total cash capital of $750,000 which was the entire and total amount of cash capital subscribed by the stockholders.

The capital in this company was subsequently increased to $4,000,000 out of the surplus profits of the company as follows:

There was transferred from the surplus profits to the credit of stock account in the year ending June 1, 1871, a further sum of $3,000,000 when the company was reincorporated under the general laws of the State.

The account marked —— will give the particulars of the creation of the capital. The statement on page — to — gives the profit and loss account of their business for the period of about sixty-one years, the time it was in existence.

The large surplus profits necessary to create this new cap-
9284 ital were nominally made up by appreciation of the value of the real estate, plant, etc., but the grounds or basis for so doing do not appear.

The dividends paid by this company, as detailed on page — have been continuous from the year 1825 to 1884, and in some years at a very large per cent. per annum.

The total paid in cash to 1871 is.....	$11,714,078 50
And from 1871 to 1884.....	3,520,000 00
A further dividend paid by the Consolidated Gaslight Company	40,000 00
Making a total of.....	$15,274,078 50
Stock dividends or amounts transferred to the credit of capital stock account.....	3,250,000 00
Making the total.....	$18,524,078 50

paid in cash and transferred to the credit of stock account.

This company was many years ago (similarly to the Manhattan Company), in the habit of transferring from their profit and loss account sundry items to provide for depreciation and wear and tear of property which in the aggregate amounted to a very considerable sum.

Finally this was written back by appreciation to the consolidated Company and the balance shown on the profit and loss resume on page — amounting to $3,647,258.19 is in fact the surplus profits of the company beyond the stock capital account.

The following gives the benefits the stockholders derived from the operations of this company:

9285	Net profits, statement No. 1	$4,344,217 78
	Net profits, statement No. 2	15,706,437 97
	Profits written up direct to depreciation account	66,689 61
	Profits on reorganization and consolidation	5,898,302 63
		$26,015,647 99
	Paid in dividends exclusive of $40,000 paid by Consolidated Company	$18,484,078 50
	Depreciation written off	3,884,311 30
	Surplus remaining ($40,000 of this returned to stockholders)	3,647,258 19
	Total capital paid in cash	$750,000 00
	Transfer from surplus profits as before mentioned	3,250,000 00
		$4,000,000 00
	Balance of separate accounts, plant, etc	$4,670,642 03
	Appreciations $1,512,357 97	
	Franchise 1,417,000 00	
		2,929,357 97
		$7,600,000 00

For which stock in the Consolidated Gas Company was issued.

9286	The stockholders have therefore received from their original investment of		$750,000 00
	Received in dividends in cash	$15,234,078 50	
	Dividends paid by Consolidated Gas-light Company, January 26, 1885	40,000 00	
	Received in shares of Consolidated Gas-light Company	7,600,000 00	
			22,874,078 50
	Total return to stockholders above their original cash investment during the years 1823 to 1884 in dividends and stock of the Consolidated Company		$22,124,078 50
	And a further estimated surplus yet to be divided of		47,258 19
	Total		$22,171,336 69

Q. Observing in your report the statement that in 1838 there was an increase of $250,000 of capital we inquire what the books show respecting that transaction—explain it more in detail.

A. November 1, 1862, there is this entry of a special dividend of

$50 per share from the accumulated funds of the company as declared, $750,000; then there is another entry here for an increase of capital from $750,000 to $1,000,000 as per resolution of October 20, 1862, which increased capital is distributed *pro rata* as a stock
9287 dividend to the present shareholders, $250,000; that is, therefore, simply a transfer from the surplus profits of the company to the credit of the stockholders.

Q. It is a dividend in the form of new stock?

A. Yes, sir, and in addition to that, in the same year they paid a cash dividend of $750,000 on their capital.

Q. They really paid that year a dividend of how much?

A. One million and seven hundred and fifty thousand dollars in cash and $250,000 transferred.

Q. That makes what per cent. of dividend that year?

A. One hundred and thirty-three and one-third per cent.

Q. What year was that?

A. Eighteen hundred and sixty-two.

Q. That explains one of the instances of the so-called increased capital stock of the New York Company?

A. Yes, sir, regarding the $250,000.

Q. Was that increased capital stock in effect a dividend distributed among the stockholders of the company?

A. Yes, sir.

Q. It differed from an ordinary cash dividend in what respect?

A. By reason of their taking out with one hand and putting it back with the other.

Q. It was equivalent to a payment to the stockholders of the amount and at the same time an investment of it in capital stock of the company?

A. Certainly, that was the effect of it.

Q. And this new capital stock so obtained became therefore the basis for future dividends to the stockholders?

A. It did and it gave the public the appearance afterward of their not earning so much dividend on their actual capital.

Q. Could you state the amount of dividends paid upon the capital so increased in the year 1863?

A. Yes, sir; $200,000, twenty per cent. on their then million.

9288 Q. That would be what per cent. on the real capital invested?

A. Twenty-six and sixty-six one hundredths per cent.

Q. The next year they paid thirty per cent. on the million, which was what per cent. on the actual capital invested?

A. Forty per cent.

Q. In 1864 what would it be?

A. In 1865 they paid $500,000 on the million, or fifty per cent.

Q. What per cent. on the actual capital?

A. Sixty-six and two-thirds per cent.

Q. Take the next year?

A. They paid $900,000 dividend or ninety per cent. on the million.

Q. What per cent. on the actual capital?

A. One hundred and twenty per cent.; then in 1867 they paid $700,000 or seventy per cent. on the capital of $1,000,000.

Q. That is what per cent. on the actual capital?

A. Ninety-three and one-third per cent.

Q. Take the next year?

A. In the years 1868, 1869, 1870, they paid fifty per cent. on their million each year; sixty-six and two-thirds per cent. on the cash capital; May 31, 1871—the first five months of 1871—they paid a cash dividend of $450,000 and transferred then $3,000,000 as well.

Q. That would be what per cent?

A. About one hundred and thirty-eight and one-half per cent. for five months per annum, on the cash capital.

Q. What was done in 1871?

A. On June 1, 1871, the company reorganized with a capital of $4,000,000.

Q. In that reorganization was any new capital stock contributed?

A. Not in cash.

Q. Was there in anything; if so, what and from what source?

A. The capital stock was increased at that reorganization from the $100,000 which it stood at previously to $4,000,000 by writing up an appreciation upon all their property to their profit and
9289 loss and writing there, say a stock dividend of $3,000,000 the credit of the capital ac-

Q. What was the practical effect of that operation; what does it mean?

A. Well, a sort of raising the wind out of nothing; it is practically creating a capital out of profits in reality.

Q. Now, then, your reasons?

A. According to their books they have a full history of how they created this capital; it comes out of their books; I have the statement before me in this way: In round figures the balance of profit and loss at that time was $925,000; they transferred sundry accounts, such as deterioration, and also, some profit on stock and United States bonds and then appreciated their properties; for instance, their real estate at the works beyond the original costs, $873,500, and their Hester street property $60,000, and their buildings and apparatus $1,208,946, that raised the credit of their profit and loss account to nearly $4,000,000, from which they transferred the $3,000,000 before referred to; now, with regard to the reason why could they do this, the methods they used in keeping their accounts previously by writing to the debit of profit and loss to the credit of appreciation account, and so lessening the actual cost of their property, amounting to such a sum that enabled them to write it back again, and reinstate the property at something like what it cost; and the effect of it is, of course, that it all came out of profits, so that the $3,000,000 came out of profits.

Q. And the profits came out of the consumer?

A. Certainly.

Q. What was done next after that; now we have got a new capital, without any addition of stock, without any contribution of stock from shareholders; you have now the capital set down at $4,000,000?

A. Yes, sir.

9290 Q. And thereafter that became the basis upon which a per cent. of dividend was declared—a new basis?

A. Yes, sir.

Q. What dividend was declared?

A. From June 1, 1871, to the consolidation, and adding thereto a dividend of $40,000, which the Consolidated Company paid, they declared and paid cash for dividends in the thirteen years of $6,560,000 on the $4,000,000 of capital.

Q. Are you able to state what annual rate of dividends that would be upon the stock actually, put into the concern, viz., $750,000?

A. The dividends paid in those thirteen and one-third years will average on the $750,000 cash at the rate of sixty-six and two-thirds per cent. per annum.

Q. On the nominal capital, viz., $4,000,000, it would be then what per cent.?

A. About twelve and one-half per cent. on the nominal capital.

Q. Then they actually received twelve and one-half per cent. of dividend on the nominal capital, or sixty-six and two-thirds per cent. on the actual stock capital paid in by the stockholders in cash?

A. Yes, sir; that is correct.

Q. It doesn't make any difference either to the consumer or the gas companies whether the one pays and the other receives sixty-six and two-thirds per cent. upon the actual investment, or twelve and one-half upon the nominal stock?

A. It is one and the same thing.

Q. If in that consolidation they had doubled the stock, called it $8,000,000, the apparent per cent. of profit would, of course, have been about six and one-quarter per cent?

A. Yes, sir; it is a fact; the New York Company did double the stock.

Q. That four million stock of the New York Company was increased to what by the consolidation in 1884?

A. Seven million five hundred and sixty thousand dollars.

9291 Q. Nearly doubled this time?

A. Yes, sir.

Q. Was any new capital stock paid in by the stockholders of the company in that consolidation?

A. Oh, no; not at all; it represented the property of the New York Gas-light Company that was turned over to the Consolidated.

Q. So that the actual cash paid in by the shareholders not derived from the natural increase of the property still remained what sum?

A. Seven hundred and fifty thousand dollars.

Q. So that now they are in effect in this consolidation, the New York Company receiving a dividend upon a nominal capital stock of how much?

A. Seven million five hundred and sixty thousand and that is nearly ten times the amount of cash actually paid into the concern by the stockholders except as it comes from profits. It is nearly ten times.

Q. So that a dividend of six per cent. now upon that stock would

be, in effect, a dividend of what per cent. upon the capital stock actually paid in of $750,000?

A. Nearly ten times as much.

Q. Namely, about sixty per cent?

A. Yes, sir.

Q. As a matter of fact, did the New York Company transfer to the Consolidated Company all of this property?

A. It did except the few remaining surplus assets.

Q. Those amount to about how much?

A. After satisfying their current liabilities about $86,000, $40,000 of which was paid in dividends by the Consolidated Company.

Q. On their account?

A. Yes, for them. That should be seventy and one-half per cent.; it is more than sixty per cent.

Q. The actual dividend declared this year by the Consolidated Company is what per cent. upon the nominal capital?

A. Seven per cent.

9292 Q. Now, so far as the stockholders of the New York Company are concerned, that is really what per cent. upon the share capital paid in by the stockholders of that company and representing their investment so made?

A. On their stock capital of $7,560,000 in the Consolidated they received a dividend this year of $529,200 or seven per cent., but upon the cash capital originally paid in of $750,000 it is seventy and one-half per cent.

Q. Can you state how the subject of depreciation has been treated in the accounts of the New York Company so as to form any conclusion from those accounts in respect to the extent of expenditure for current repairs and keeping the works in good order or of the amount to be allowed for such purposes by way of depreciation?

A. Not accurately, I cannot, for the reason that fifty years ago this company did not keep their books in the same accurate condition that they do now. I think the best guide of that will be my accounts for last March for the ten years.

Q. Have you any reason to indicate a data useful to forming an opinion upon this subject different from the data exhibited in the amount ending in the ten years ending 1884 which was compiled by you last spring?

A. I think the accounts I compiled last spring are accurate; putting the totals against the cost of works, it is about twelve per cent. for the New York Company, and they are all about alike; repairs to the apparatus and works which they have raised and put to that particular account, the aggregate is about $2,750,000; furthermore, there is a depreciation account which was also charged with some of these repairs which I cannot very well get at; this depreciation account, as I before told you, although it was called such, it was really

9293 an account for no other purpose practically than to hide away some of the profits until the opportunity came for them to increase the capital stock from it; they did not spend all this depreciation account; there was a great deal more put to it than was actually necessary, and, therefore, it comes down to my previous remark when I explained how the $3,000,000 was raised, that this

depreciation account, a great part, was nothing else but surplus profits; the New York Company kept their account within the period of fifty years in about half a dozen different methods; it would be great labor to get that accurate, but still it all comes down to the same point; you cannot get over the fact that the New York Company benefited in capital stock and cash dividends for the $750,000 that they paid in; they benefited in sixty-one years from two sources, $22,171,336.69—that is actually the amount; there is no getting over that point, but the details of how they treated the inside figures could be by great labor got at.

Mr. TREMAIN: We will suspend the examination of Mr. Yalden for the present for the purpose of examining Mr. Palmer.

DAVID PALMER, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You are an officer of the City Bank?
A. Cashier of the National City Bank.
Q. You have charge of the loans that are made by the bank?
A. Yes, sir.
Q. Are they made by your direction?
A. Mostly.
Q. By anybody else's direction?
A. Not often, sir.
9294 Q. Does Mr. Pyne have any thing to do with it?
A. He is the president of the bank.
Q. Does he make or direct loans?
A. Not very often, sir.
Q. Have you a record of the collaterals upon which loans are made?
A. No, sir; you mean do we keep a record; yes, we do, sir.
Q. In what shape?
A. Keep the items, the name of the party to whom it is loaned, and the collaterals on which the loan is made.
Q. Loan book?
A. Loan book.
Q. Do you always take collateral in making loans?
A. Yes, sir; generally.
Q. Do you remember an offer made by the City Bank to the Consolidated Gas Company of a loan of $300,000, early in 1884.
A. No, sir.
Q. Was there any such offer ever made?
A. No, sir; I know of no offer.
Q. Do you remember of anybody asking for a loan on Consolidated gas stock early in 1885?
A. I cannot say that I do, sir; I know that loans were made.
Q. Do you remember when the first one was made?
A. I do not.
Q. Were you subpœnaed to bring any books here?
A. I was.

Q. What books have you brought—any?
A. None.
Q. Would it have been inconvenient to have brought one of those books?
A. Those books cannot be removed from the bank; none of the books can be removed.
Q. Would it have been inconvenient to have brought the loan book?
A. I could not.
Q. Would it have been inconvenient to have brought the loan book?
A. Yes, sir; it would have been inconvenient.
9295 Q. In what way?
A. I could not take any books out of the bank, sir.
Q. In what way?
A. It would be impossible for me to bring the books, because they couldn't be taken from the bank.
Q. Scratch that answer out. Would it have been any inconvenience to have brought that loan book?
A. Yes, sir.
Q. Why?
A. Because it is in constant use and is required to be there.
Q. Is there only one?
A. Only one.
Q. During what hours is it in contsant use?
A. From the opening to the closing of the bank.
Q. From ten to three?
A. Yes, sir; from ten to three.
Q. Would it be any inconvenience to the practical business of the bank to bring it before the committee after three o'clock to be returned that same day or in the morning before ten?
A. Sometimes the books are used as late as eight o'clock in the evening and sometimes until nine.
Q. Is that so with regard to the loan book?
A. Yes, sir.
Q. Do you need the loan book in balances?
A. Yes, sir.
Q. What particular person in the bank uses the loan book in making out the balances?
A. Some clerk, bookkeeper.
Q. The loan book?
A. Yes, sir.
Q. Would the loan book account be in the ledger?
A. No, sir; only general accounts in the ledger.
Q. How big a book is the loan book?
A. As large as this one.
Q. Have you any personal recollection about the transaction of loans that had been made on Consolidated Gas Stock?
9296 A. I know that loans have been made to the Consolidated Company.

Q. Have you any personal recollection concerning transactions of loans on the Consolidated Gas stock as collateral?

A. Do you mean to any person?

Q. Whether you have any personal knowledge or recollection of such transaction?

A. No, sir; no knowledge except what I take from the books.

(By the CHAIRMAN:)

Q. Whether you now have any recollection of such a transaction as Mr. Tremain has mentioned of loans made upon Consolidated Gas stock?

A. No, sir.

Q. Have you any recollection of any loans made to the Consolidated Company?

A. I know that loans were made to them.

Q. Did you conduct those transactions?

A. Generally; yes, sir.

Q. With whom?

A. With the treasurer of the company, Mr. Smith.

Q. When was the first one?

A. I do not remember.

Q. Can you tell about when it was?

A. No, sir.

Q. How many such transactions did you have?

A. I could not state the number positively, sir.

Q. Did you conduct all of the transactions of that character personally, when loans were made to the Consolidated Gas Company?

A. I think it is very probably I did, sir.

Q. Do you not remember when the last one was?

A. It was in October, I think, sir, of this year.

Q. Was that a payment of a loan or a new loan?

A. That was a new loan.

Q. What collateral was deposited?

A. I think it was the notes of the Consolidated Company.

Q. Time notes?

A. Demand notes.

9297 Q. Any other collateral?

A. No, sir.

Q. Is that what you would call among banks, taking a demand note without collateral?

A. Yes, sir; it is a common thing, sir.

Q. Without any name on it at all?

A. Without any name on it.

Q. Has that been a common thing with the city banks for years past?

A. It has been a common thing with all banks.

Q. Confine the question and answer to the City Bank, has that been a common thing with the City Bank for years past?

A. It is not an uncommon thing, sir.

Q. Have you done that thing more than once during 1885?

A. Yes, sir.

Q. With any other person or company except the Consolidated Company?
A. Yes, sir.
Q. What company?
A. I could not particularize any company or individual.
Q. I ask you to particularize; name any other instance?
A. I could not name any other instance, sir.
Q. How many times have you had a transaction of that kind during the year with the Consolidated Gas Company?
A. I cannot say.
Q. Is that the way that loan stands now?
A. No, sir.
Q. How does it stand now?
A. It has been paid.
Q. When was it paid?
A. Three hundred thousand dollars paid this morning.
Q. Is that the way that loan did stand until to-day?
A. Yes, sir.
Q. Paid since you were subpœnaed?
A. Paid this morning.
Q. You were subpœnaed yesterday?
A. No, sir.
9298 Q. What time this morning were you subpœnaed?
A. I could not tell the time; I did not take note of it.
Q. What time was the loan paid?
A. Shortly after the opening of business this morning, sir.
Q. Who paid it?
A. I charged it to their account, sir.
Q. Who asked you to?
A. I did it myself, sir.
Q. Their account was then good, was it not?
A. Yes, sir.
Q. Their dividend checks are drawn on your bank?
A. I presume so.
Q. Don't you know?
A. No, sir.
Q. Don't you know they were printed and drawn on your bank?
A. I never have seen one, sir.
Q. Don't you know the fact that the dividends of the Consolidated Gas Company were paid by checks on the City Bank?
A. Well, I presume they are; I don't know any thing further than that.
Q. You are the cashier of the bank?
A. Yes, sir.
Q. Haven't seen those checks stamped upon them, dividend checks?
A. No, sir.
Q. Don't you know what the business is that induces the checks to be drawn upon that bank from the Consolidated Company?
A. No, sir.
Q. Have they more than one account there?

A. That I could not say.

Q. Do you mean to say, as cashier of that bank, you do not know whether or not the Consolidated Gas Company have more than one account in your bank?

A. I do not know.

Q. How long would it take you to find out?

A. Perhaps fifteen or twenty minutes.

Q. You charged this loan against their account?

A. Yes, sir.

9299 Q. After you had received the subpœna or before?

A. After.

Q. That loan was made in October, was it not?

A. Yes, sir; I think it was.

Q. At two per cent. or six per cent.?

A. The demand loan was settled and paid this morning for the time it ran at three per cent. per annum.

Q. And at the time that loan was made, in October, was there any outstanding loan then?

A. I do not think there was.

Q. Had there not been a short time before?

A. There had been a loan previous to that time.

Q. Do you not remember that there were at least three other loans during this year?

A. I do not remember the number or loans made this year.

Q. Can you remember any amount?

A. No, sir.

Q. Earlier in your examination you said your bank made no offer to loan to the Consolidated Company?

A. Not to my knowledge.

Q. You remember a loan, do you not, in February, 1885, of $300,000?

A. No, sir.

Q. Wasn't it? Do you remember when the first loan was made of $300,000?

A. I do not.

Q. Do you remember that there was such a loan made in 1885, prior to this last one in October?

A. No, sir.

Q. Well, it may refresh your recollection; for the purpose of asking the question based upon it, I quote an extract from the minutes of the finance committee of the Consolidated Gas Company of a meeting held February 3, 1885, at which it is noted Pyne was present, and also quote that the treasurer of the company stated that the company would probably need $300,000. The chairman of the committee, Pyne, stated he would loan the amount required on call at two per cent. per annum, and thereupon the officers of the

9300 committee were authorized to make such a loan; also $100,000 additional loan. Was such a loan made to the best of your recollection at any time by the City Bank prior to this loan of October 2?

A. I do not remember.

Q. Will you be able to refresh your recollection by looking at your books and then you can testify after doing so, can you not?

A. I presume I can.

Q. Please, look at your books so as to be able to state all the transactions with the Consolidated Company in the way of loans or advances and credits, or any loans made to anybody on Consolidated stock as collateral security?

[Mr. Palmer's examination was at this point suspended.]

Recess until 3 p. m.

Hearing resumed.

JAMES W. SMITH, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

—. What are the total annual executive expenses of the Consolidated Company?

A. What do you mean to include under that head?

Q. All expenses of the management?

A. I could not say.

Q. If the accounts had been exhibited so that the items could have been abstracted, the question would not have been necessary?

A. I cannot even approximate from memory.

Q. Can't you state to the best of your recollection what the management expenses per annum are, or about what is their present rate?

9301 A. I should suppose they would come within $75,000 a year.

Q. Within that figure what do you include?

A. The salaries of all the general officers and of all the clerks who attend to the general business of the company as distinguished from its branches; there are other items of expense which I presume you do not intend now to inquire about, like taxes which, of course, are not included.

Q. Are there any other items of expense that belong to the general management?

A. The incidental expense of stationery.

Q. Now, as to salaries, the president has how much?

A. Ten thousand dollars a year.

Q. And how many vice-presidents?

A. Two; $10,000 a year each.

Q. The treasurer?

A. Ten thousand dollars.

Q. The secretary?

A. Ten thousand dollars.

Q. And the chief book-keeper?

A. Three thousand five hundred dollars or $3,500; I am not sure.

Q. The head clerk?

A. Well, the others would come under the head of assistants.

Q. The two vice-presidents?

A. Mr. Lees and Mr. Zollikoffer in the order.

Q. Isn't there another vice-president?
A. The first vice-presidents and second; I have named all the officers.
Q. What is Mr. Whitehouse's position?
A. He belongs to the branch—Carpenter.
Q. Connected with the main office is the office of the Manhattan branch?
A. It is in the same building but it is distinct.
Q. Who is at the head of that?
A. Carpenter.
Q. What is his compensation?
A. It is not included in the $75,000 in my estimate; it is a separate branch.
Q. Assuming it to be a separate branch, the Manhattan
9302 station?
A. The Irving place branch; $6,000.
Q. By the Irving place branch, you mean the Manhattan?
A. I mean the business which was formerly done by the Manhattan Company.
Q. Who has charge of the Hester street office?
A. Mr. Doane.
Q. Who manages the Twenty-first street station?
A. William T. Lees, I think.
Q. He is the son of the former president?
A. Yes, sir.
Q. Who manages the station at North river and Eighteenth street?
A. A. M. Smith, Wil*l*am Combe, Fourteenth street and East river; Mr. Stricker at Forty-second street station; Mr. Bradley at the Forty-sixth street station and also of the Ninety-ninth and One Hundred and Eleventh, with an assistant.
Q. Does that cover them all?
A. Yes, sir; six stations.
Q. What compensation, if any, do any of the directors receive?
A. No stated compensation except a fee of $10 for attending the meetings.
Q. And also the executive committee members?
A. That is the same; that is, such of the members of the board of directors as receive no other salaries.
Q. And only those?
A. Only those.
Q. In order to close the fractional lots of shares, did the Consolidated buy some stock of the Manhattan?
A. No, sir.
Q. Did they buy any stock of the constituent companies?
A. No, sir.
Q. How did they adjust the fractional shares that are convertible into full shares?
A. When presented in even multiplies amounting to one or more shares they are marketable and purchasable and salable the same as the full shares.
9303 Q. That does not answer the question how did the Consolidated Company treat fractional shares?

A. They issued the certificates in fractional parts.
Q. Was any stock bought for account of the constituent companies?
A. By whom?
Q. By the Consolidated?
A. No, sir.
Q. Or for the Manhattan?
A. There was for the Manhattan.
Q. What stock was bought?
A. Twenty thousand dollars par value.
Q. When was that transaction?
A. Previous to the consolidation.
Q. That does not answer the question?
A. That is all the answer I can give.
Q. About how long previous to the consolidation?
A. Within a very short time, probably within thirty days.
Q. Through whom was that transaction made?
A. I purchased the stock in behalf of the Manhattan Company.
Q. Who did you buy it of?
A. One party I bought 150 of, E. S. Higgins, and I think, some stock was in the name of S. Charles Phelps.
Q. Who was it bought through?
A. I do not recollect; the stock came to me for sale as it frequently does, offered to me.
Q. What was the object of that purchase for the Manhattan?
A. In order to equalize the shares; the amount allotted to us was $11,940,000.
Q. What did those shares cost?
A. About $50000—a little less.
Q. That would be at a price of about $250?
A. I think I paid $240 for a majority of it.
Q. That was paid for out of the funds of the Manhattan Company?
A. Yes, sir.
Q. What was done with that stock?
A. Cancelled.
9304 Q. And do you say that the Manhattan Company paid for that?
A. Yes, sir, and there was no stock of the new company in lieu of it.
Q. You have an account as treasurer of the Consolidated Company with the City Bank?
A. Yes, sir.
Q. With what other banks?
A. Mt. Morris, First National, The Germania, The Bank of The Metropolis; I believe that was all.
Q. Are any deposits made in any of those banks from the original office except in the City Bank?
A. There are none.
Q. In all the other banks the deposits are made by the branch offices?

A. From their collections deposited every day.

Q. No checks are drawn on any of the banks except upon your signature?

A. My own or the secretary, and signed also by the president or vice-president.

Q. Where is the pass-book and check-book on the City Bank?

A. Probably at the office.

Q. Under your direction?

A. Yes, sir; I presume so.

Q. Could not you give a direction now to Mr. Young, the book-keeper, who is here, to go and get them and bring them here?

A. I do not think the Committee will ask to have them brought here; it would inconvenience the company; they are open to inspection to any person delegated by the Committee, under my supervision.

Q. In the absence of Mr. Gawtry and yourself, no one could sign any of the checks while you are here?

A. That is true.

Q. Are there two accounts in the City Bank?

A. No, sir; but one.

Q. Where is the dividend account kept?

A. In the City Bank.

9305 Q. The checks to pay dividends are drawn on the general account?

A. Yes, sir.

Q. What checks are drawn on that account?

A. All checks for supplies, pay-rolls, taxes and expenses of all kinds.

Q. Are any checks, except transfer checks, drawn on the other bank accounts?

A. No other checks.

Q. Are any deposits made in the City Bank except the transfer check?

A. Yes, sir; any thing that is in receipt from the general office.

Q. You keep an account in the City Bank; do you keep a personal account?

A. No, sir; not in the City Bank.

Q. In any other bank?

A. Yes, sir.

Q. What bank?

A. The Central National.

Q. Since the 2d of October has the Consolidated paid any money to the City Bank in payment of loans?

A. Yes, sir; a loan of $300,000 has been paid by their charging it up.

Q. With that exception, no money has been paid by the Consolidated to the City Bank, since the 2d of October, in payment of loans, has there?

A. To the best of my recollection, there has not.

Q. Do you know the amount—approximate amount—there was to the credit of the Consolidated Company this morning in the City Bank?

A. No, sir.
Q. Did it exceed $300,000?
A. I presume it did.
Q. Did it exceed $500,000?
A. I could not say; I did not look at their books.
Q. Don't you keep the bank balances?
A. Yes, sir.
Q. You began to pay dividends the 15th?
A. Yes, sir.
Q. How much has been paid out on account of that dividend?
A. About $1,100,000 in excess of that probably.
9306 Q. Was it all paid by checks on the City Bank?
A. Yes, sir.
Q. What, if any, loans are outstanding at this moment?
A. The company's notes are out for $600,000.
Q. Who holds them?
A. I don't know; I presume the City Bank.
Q. Demand notes?
A. No, sir.
Q. Discounts?
A. No, sir, hardly a discount; the paper was sold practically.
Q. How old are those notes?
A. I think about three days, that is, since they were issued.

(By the CHAIRMAN:)

Q. The entire $600,000?
A. Yes, sir; they were issued on the 15th.
Q. To whose order were they drawn?
A. James W. Smith, treasurer.
Q. When endorsed to whom did you hand them?
A. I think it was Mr. Palmer, an officer of the City Bank, and received a check for it less the interest.
Q. How long were they to run?
A. They mature at intervals; the first January 10th maturing at intervals of $100,000 about every ten days until the end of February.
Q. At rate of discount?
A. Four per cent.
Q. Per annum?
A. Yes, sir.
Q. Did any collateral accompany them?
A. Not strictly speaking, but there was a pledge of the company's receipts.
Q. A formal agreement or writing to that effect?
A. A letter signed by me.
Q. By that you mean consumers' balances?
A. No, sir; receipts of the company of every nature, our current receipts.
Q. That includes consumers' payments?
A. Yes, sir.
Q. No other collateral?
A. No other.

9307 Q. When those notes for $600,000 were delivered, did you take up a demand note of $300,000 in place?

A. No, sir.

Q. They were an addition to the demand note for $300,000?

A. They were.

Q. Why was that demand note for $300,000 paid off this morning, if it was?

A. I could not say, sir.

Q. Is that note returned to you?

A. There were three notes returned to me with a note, stating that it had been charged up to our account.

Q. That was to-day?

A. That was to-day.

Q. With interest of three per cent.?

A. Yes, sir; with interest at three per cent.

Q. What was the loan next immediately preceding the $300,000 loan?

A. Four hundred thousand dollars, I think.

Q. What was its date?

A. You will find it in my former testimony.

A. That don't indicate when it was discharged or matured?

A. There was no maturity to that.

Q. What was its date, of the loan of $400,000?

A. I think within the first six days of October.

Q. When was it paid?

A. I don't know.

Q. Is it paid?

A. Oh, yes.

Q. When was the next preceding that one?

A. About the 30th of June.

Q. How much was that?

A. Seventy-five thousand dollars.

Q. When was that paid?

A. This is in correction of my former testimony, where I said $200,000; I think it was paid about the 6th or 8th of July.

Q. Entirely?

A. Yes, sir.

Q. Prior to that when was the next previous loan?

A. The counsel led me in error in putting a question; this

9308 is wrong; strike out with regard to that previous loan of $400,000; it is $300,000 I had in my mind; it was paid off to-day.

Q. When was the loan that was immediately preceding that one?

A. If my recollection serves me right, the June loan of $75,000.

Q. What you mean is that no loan was made between June 30th of $75,000, and October of $300,000?

A. Yes, sir.

Q. When was the next preceding the one of June 30th of $75,000?

A. I think it was on the 2nd of February.

Q. That was $330,000?

A. No, sir; it was $300,000 or $400,000.

Q. Four hundred and twenty thousand dollars?

A. No, sir; it was either $300,000 or $400,000; I don't remember which; I think it was $400,000.

Q. Now, when was the loan discharged?

A. Before the end of March, I think, sir.

Q. What did you borrow this $600,000 for?

A. To replace earnings that had been used for other purposes for retiring the bonded obligations of the company, and for money that had been expended for construction.

Q. What immediate obligations did you have to pay?

A. We had our supplies—purchases of coal and naphtha and lime; our pay-rolls and our dividend.

Q. If you had not had to pay that dividend at that time in money, would the loan have been necessary?

A. I don't know, sir.

Q. The dividend took one and a quarter million?

A. Yes, sir; nearly.

Q. And the profits were anticipated to meet it?

A. No, sir.

Q. Well, they were estimated?

A. No, sir; it had been earned.

(By the CHAIRMAN:)

9309 Q. Did you not borrow money on credit anticipating profit to pay a dividend?

A. No, sir.

Q. You did borrow money?

A. On anticipated receipts.

Q. Then you did borrow money based upon anticipated receipts?

A. Well, hardly that, sir; I do not think that is a statement of the case; it is not my evidence, at any rate.

Q. You say then that that was not it?

A. It was a pledge of the receipts to repay it.

Mr. TREMAIN: We will suspend the witness' examination at this point in order to allow the expert to look at those books at the office.

The WITNESS: I will be very much obliged to the Committee if they will allow it to take that course; I am willing to produce the books for examination, but I am not willing to allow them to go out of my custody; I do not know that I have authority or control to bring the books here.

Senator MURPHY: The witness wants protection by means of a subpœna.

The WITNESS: I think I should appeal to this committee to get their opinion upon this subject; I think the books should not go out of the office.

Senator MURPHY: Upon the witness' statement, I think he should be protected by a subpœna.

The WITNESS: I am willing to produce the books and take them back with me, but not to leave them.

The CHAIRMAN: You can produce the books, and if for any reason, it should be desirable to examine them further then we will consider it.

J. YALDEN, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. You are prepared to give the evidence of the Municipal and Knickerbocker Companies?

9310 A. Yes, sir. The above companies were organized in the year 1876 and subsequently merged and operated under one management up to the time of the consolidation, on November 11, 1884.

The Knickerbocker Company was formerly the Union Gas-light Comapny and passed into the hands of a receiver. It appears that the works of the Knickerbocker Company were partly built and completed from funds supplied by the Bayard estate, and the advances for that purpose amounted to about $1,200,000, which was secured by the lease between the Municipal and Knickerbocker Companies provided for the guarantee for the payment of interest and principal upon the $1,200,000 in bonds. At the same time the Knickerbocker Company stock was purchased by the Municipal for $50,000 in cash, the latter company transferring in trust the whole of its shares capital, viz.: 15,000 shares, at $100, representing $1,500,000 of stock.

The Municipal Company was incorporated July 7, 1876, with a capital of $500,000, and commenced operations by issuing 3,500 shares of stock, at par value, of $350,000, to Mr. R. M. C. Graham, in consideration of the purchase of the New York Oxygen Gas Company. Of this $250,000 was returned to the treasury of the company, to be sold and used as working capital, leaving the actual cost to the company of the property acquired $100,000. The $250,000 stock was disposed as follows:

Cash	$215,300
In payment of expenses	8,900
Discount on stock sold below par	25,800
Making a total	$250,000

9311 And $150,000 of stock was issued to Mr. E. Stearns, agent, in purchase of a certain patent-right, known as the De Motery patent, and this transaction, with the stock issued to Mr. Graham, completed the entire issue of the original $500,000. Of stock, in 1877, a further increase of $1,000,000 was made on the capital stock, of which $800,000 was paid in cash and $200,00- paid for the purchase of patents; and in 1879 a further issue of $500,000; and in 1880 a further issue of $1,000,000, both of which were paid in cash, making the total issue of capital $3,000,000.

The particulars of the capital account are detailed in "D 1."

To enable this company to provide additional capital for its plants and works, an issue was made in 1877, of $750,000 in bonds; $390,-000 were sold for cash, and the balance, $360,000, was deposited as security for the purchase of real estate and other property, and of these bonds there remained at the time of the transfer to the Consoli-

dated $291,000, the liability of which was assumed by the Consolidated Company.

In the last issue of $1,000,000 of stock, in 1880, there was included a subscription by the Bayard estate of three thousand five hundred shares, amounting to $350,000, a check for which was paid the company on March 16, 1880. The history of this transaction appears to be that the Knickerbocker Company had instituted a suit against the Municipal Company for damages for the non-fulfillment of a certain contract, which action was settled by payment to the Bayard estate on the 16th March, 1880, of the sum of $300,000 and the $50,000 before referred to for the purchase of the Knickerbocker stock, making a total of $350,000 capital; a check by the Bayard estate for $350,000 concurrently paid to the company as a sub-
9312 scription for the 3,500 shares so issued. This stock appears by the register of stockholders to have been subsequently transferred in part to the shareholders of the original Knickerbocker stock under management between the parties. The above amount of $300,000 for damages was charged to the profit and loss account, and the $50,000 was charged up as an investment for Knickerbocker stock, so that in reality the company had paid damages and invested in the Knickerbocker stock at the expense of their capital account, and the transaction being concurrent, the company in reality parted with no money. In 1880, when the Knickerbocker property was acquired by the Municipal as before stated, the two companies were conducted under one management, and a separate set of books was kept showing the production and profits of each company at their respective works, as likewise the amounts paid out for improvements to works and mains, etc., and the cost of each was provided out of the Municipal funds. The separate profits of the two companies are shown in statement D. — to — and result in a surplus, during the operations of $2,493,543.51 after payment of dividends amounting to $2,806,-192.50.

The profit and loss account also contains a credit on June 30th, 1879, of $300,000 paid by the New York Gas-light Company for the right to manufacture gas by the process now in use by the Municipal Company.

The purchase of this patent in the first place was charged up to the purchase of "patent accounts," but the sum received for the right to manufacture from another company was credited up to "income account." The total outlay by the Municipal Company for
9313 real estate, buildings, works, plant, services, mains, meters, etc., is $4,092,347.86, which was appraised in the Consolidated Company at $5,100,000, leaving an appreciation, including the franchise, of $1,007,652.14. The Knickerbocker Company's outlay for improvements, meters, plant, services, etc., provided for the Municipal amounted to $810,481.15, but the works, the value of which is not brought into the books, were appraised to the Consolidated Company at $3,000,000, leaving an appreciation (subject to mortgage bonds) $2,189,518.85, the total amount, therefore, of the two properties transferred to the Consolidated was $8,100,000, from which deducted for liabilities $1,500,000, leaving a net amount of $6,600,-

000 of stock issued to the stockholders of the Municipal Company in consideration of the two properties, less the incumbrances.

In reference to the dividend account, page D —, the Municipal Gas-light Company commenced paying dividends in 1879 and for the six years ending 1884, paid to their shareholders the sum of $2,806,192.50, by way of dividends, to which must be added the stock of the Consolidated Company amounting to $6,600,000, making a total of $9,406,192.50.

To this, however, must be added division of assets since the consolidation already paid, $795,000, and a further surplus of about $137,000, making a total amount received and to be received by the stockholders of the Municipal Company for the original capital:

9314	Cash dividends and surplus to be divided...	$3,738,192 50
	And the stock of the Consolidated Company to represent the original investment of $3,000,000	6,600,000 00
		$10,338,192 50
	Deduct, amount of stock capital paid in.....	3,000,000 00
	Net benefits received in cash and stock beyond the original investment	$7,338,192 50

As before mentioned, the Knickerbocker stock was bought by the Municipal Company for $50,000, which was charged to an account called "The Knickerbocker stock account." The stock itself, however, was transferred and held in the name of trustees, and arrangements with the old stockholders were apparently made by the subscribers to the Bayard stock of 3,500 shares, a part of the issue of 1880. When the Municipal Company was transferred to the Consolidated Company this stock was divided *pro rata* among the then stockholders of the Municipal Company, and taken at a valuation, to include plant, of $3,000,000, from which was deducted the bonded debt of about $1,137,000. The shareholders of the Municipal, therefore, were benefited in this transaction nearly $1,863, and by the profits accumulated from the manufacture, less the outlay upon the works and the cost of the stock, about $860,481.15.

Q. Referring to the results of the examination of the accounts of all the constituent companies which you have made, and for the purpose of stating totals, have you prepared a summary which
9315 will show the total nominal share capital at the time of the consolidation, and how much thereto in all had been contributed in cash, and how much from surplus profits?

A. Yes, I have.

Q. Will your statement also show the total dividends paid in money, and the other total profits in stock of the consolidation as outlined in your testimony, touching the New York and Manhattan Companies?

A. Yes, it will.

Q. Will it also show the total cost of properties entered into the capitalization of the Consolidated Company?

A. Yes, it will.

Q. And can you also state the total amount of the distribution of the assets of the constituent companies, which was made in the shape of extra dividends, or in some other diminution of working capital, in fact, among the old shareholders of the constituent companies?

A. Yes, sir; there is one item, the cost of the property of the Knickerbocker, which is not properly stated perhaps—$800,000—that is not really the cost of the property, but that is all I know that has been spent on it, that there was one and a quarter millions of bonds; presumably those bonds were paid, but I have no means of tracing it.

Q. All you can trace is $110,000?

A. All that I can trace on the books; I have no record to show me any part of the one and a quarter million dollars spent.

Q. At this point I will incorporate in the summary of accounts of the several constituent companies as above indicated?

A. Yes, sir.

Q. Before passing from that summary I shall ask you to state in answer to this question the several accounts of properties or assets of the constituent companies that were distributed among their
9316 respective shareholders and which did not form a part of the capitalization of the Consolidated Company. I want it by companies.

A. On the Manhattan Company it is not mentioned there, but there is $400,000 which was distributed by the Consolidated Company; the New York, $87,258.19; the Metropolitan, $686,988.17; the Municipal and Knickerbocker, $932,843.63. Those three amounts make a total. There is the Harlem $32,000 which the Consolidated paid for.

Q. Those amount in all——

A. That gives a total of $2,139,089.99 surplus assets and dividends distributed among the stockholders of the constituent companies after the date of consolidation. Four hundred and thirty-two thousand dollars of that was paid by the Consolidated Company by way of dividends for the Manhattan and Harlem Company and the remainder collected and distributed by the companies themselves.

Q. So that, as a matter of fact, instead of the actual capital or properties of the Consolidated Companies being greater, in fact, than the aggregate of the entire properties of the constituent companies, the total properties of the Consolidated Companies are less by the sum of $2,139,089 than the total actual properties of the constituent companies as they existed prior to the consolidation and at the time of the consolidation. That is the fact, is it not?

A. Yes. The $2,139,089 is practically the working capital of the constituent companies at the time of the consolidation, for this reason, that the companies turned over nothing else to the Consolidated Company but their plant and properties, services and mains; and, although they had turned over their liquid assets, such as coal and supplies, customers, balances, etc., they were collected by the Consolidated Company for the account of the respective com-
9317 panies, and paid away in part for their account or paid for to them in cash.

Q. At all events, the actual assets were so distributed among the shareholders of the constituent companies as to result in a diminution of total assets in the consolidation below what they were in the constituent companies by exactly that sum of $2,139,089?

A. It resulted in a diminution of the assets of the constituent companies certainly, which were not turned over to the Consolidated Company.

(By the CHAIRMAN:)

Q. The Consolidated Company had less assets than the constituent companies had at the time of consolidation by $2,139,089?

A. Yes, sir, decidedly.

Q. Have you got total of your summary so that you can answer the following questions: the total nominal share capital of the constituent companies at the time of the consolidation was what?

A. The total capital at the time of the consolidation of the whole of the companies?

Q. Yes.

A. Not including $1,500,000 for the Knickerbocker, $15,500,000 exclusive of that of the Knickerbocker.

Q. Of that amount what was the total, by your testimony, already delivered, as found by the books to have been actually in cash capital?

A. Eight million seven hundred and twenty-seven thousand and fifty dollars; that is the actual cash capital paid in.

Q. What did you find to have been the total of such share capital contributed from surplus profits?

A. Four million two hundred and eighty-four thousand and seven hundred dollars.

Q. What do you find to have been the total of that share capital that was issued for the property?

9318 A. Two million four hundred and eighty-eight thousand and two hundred and fifty dollars; those three items make $15,500,000; I think I will make one correction in the Harlem in that amount of $4,284,700; that includes $200,000 of the Harlem which they created by increasing the cost of their property without any value whatever.

Q. For this $200,000 of increase there was a nominal entry made in the books?

A. Yes, sir.

Q. And stock for it created?

A. No, sir; the stock had been created but went to help pay what it ought not to pay.

Q. It helped go to pay what ought not to have been paid because of calls on the stock?

A. Yes, sir; it showed a fictitious payment of capital stock.

Q. Including that item and the three items you have stated make the total $15,500,000, the nominal share capital of those companies?

A. Yes, sir.

Q. What is the total amount of dividends in money that you found to have been paid?

A. Paid by the respective companies, the constituent companies, in cash, $56,741,613.27.

Q. What do you find to have been the profits in excess of those dividends represented by stock now outstanding?

A. That is, you mean the difference exactly in the two stocks?

Q. Yes.

A. The difference of the old stocks in the constituent companies and the stock of the Consolidated representing the sum as $20,970,000.

Q. Now, what are the total benefits?

A. Seventy-nine million four hundred and eighteen thousand seven hundred and three dollars and twenty-six cents.

Q. How did you arrive at that?

A. That is the total cash dividends paid; the difference between the value of Consolidated stock at par and the par value of
9319 stock in the constituent companies, and the surplus assets they have divided since the consolidation, and—the latter amounting to $1,707,089.99, therefore the companies have this seventy-nine and a half million dollars, and in addition thereto, par value of stock in the Consolidated Company equivalent to the stock in the original companies.

Q. In addition to those benefits amounting to $79,418,700 the stockholders retain, do they not, respective shares of stock in the Consolidated Company amounting to $15,500,000?

A. Yes, sir.

Q. So that the total benefits in stock and accretions to the shareholders, including their original investments, was how much?

A. About $95,000,000.

Q. Did you have before you the original returns made to the tax office for the Knickerbocker Gas-light Company from 1877, to 1884, inclusive?

A. Yes, I did last spring.

Q. Are the following true extracts from those returns?

A. Yes, sir.

By Mr. TREMAIN: They are extracts from the return of 1877: "The company has not done any business as yet; works not yet completed; no actual value to the stock over real estate."—1879. "The company has not done any actual business as yet; the works not yet completed: no actual value to the stock over real estate."—1880. "Stock of the company is of nominal value only beyond its real estate; this process for manufacturing gas is of no practical value, having been tested and its use has been discontinued; the liabilities outstanding as above stated reduce the value of the capital stock to the extent stated, and make its value only that of the real estate. The company is the successor of the defunct Union Gas-light Company which failed"—1881. "The Company's stock is
9320 only of nominal value beyond its real estate. This company is the successor of the defunct Union Gas-light Company which failed, and its works are not now in operation—1882. "The capital stock of the company is only of nominal value beyond its real estate; the company is the successor of the Union Gas-light

Company which failed, and its works are not now in operation"—1883. The capital stock of this company is only of nominal value beyond its real estate; this company is the successor of the Union Gas-light Company, which failed. "This company has leased to the Municipal at a rent of less than the interest on its indebtedness"—1884. "The capital of this company is only of nominal value beyond real estate. This company is the successor of the defunct Union Gas-light Company, which failed. This company has leased to the Municipal at less than the interest on the indebtedness."

Q. You had before you the sworn returns when these extracts were made?

A. Yes, sir.

Q. You may give us evidence with regard to the Harlem?

A. Yes, sir. This company was incorporated in 1855 under the act entitled "An act to authorize the formation of gas-light companies," passed February 16, 1848, and during the first year of its existence, issued and received payment for $85,000 of stock. Within the succeeding four years it issued further capital to the amount of $262,900 of which $150,950 was issued in payment for construction and works. By subsequent issues at different periods the total stock capital was brought up to $2,000,000, of which $1,569,050 was paid up in cash, $150,950 was issued as above in payment for construction and works, $200,000 was credited by appreciation by resolution of the board, May 21, 1866, and $80,000 was issued in July, 1864, by way of scrip dividend.

9321 The particulars of the foregoing are shown by the capital account, pages E, 1 C and 2 C. In 1875 $150,000 in bonds bearing interest at seven per cent. per annum, payable one-half yearly were issued and subscribed for, and in 1879 a further $20,000 were taken up, making a total bonded debt of $170,000.

The company did not enter upon active business until the early part of 1857, and the results up to the time of their amalgamation with the Consolidated Gas-light Company are shown in yearly, and five-yearly periods by the analysis of the profit and loss account, pages 3 C to 7 C.

An examination of the figures contained in the above-named analysis will show that the company during the twenty-seven years of its active business paid to its stockholders dividends to the amount of $2,329,917.25 (inclusive of the $80,000 scrip), and paid interest regularly on their bonds.

From the statement headed "Current Capital Account," pages 11 C to 14 C, it will be noted, that this company, whilst always commanding a steady business had not at all times ample capital at command. This arose to a great extent from a very large portion of the business of the company being the public lighting, which returned but a bare profit, if any, on the cost.

The rate of dividends paid by this company has at no time been excessive, averaging in many years considerably below ten per cent. (See Capital and Dividend Account, pages 15 C and 16 C.)

The transfer of this company's property to the Consolidated Gas-light Company was effected at an appreciation of (in round figures)

$1,313,000, in the real estate, building, retorts, plants, mains and services, and the franchises and rights were charged up at
3322 $469,082.54. (For further full particulars of this, see Particulars of Sales to Consolidated Gas-light Company, page 8 E.) The statement shows $3,000,000 Consolidated stock issued, the actual amount of stock received, however, approximated $2,830,000—$170,000 being retained by the Consolidated Gas-light Company, on account of liability assumed by them of the $170,000 bonds of the Harlem Gas-light Company, which have since been paid off by the Consolidated Company.

From the foregoing, and by reference to the annexed tabulated statements it will be seen that in a condensed form the following figures give particulars of total cash and capital investments and profits derived therefrom by the stockholders of the Harlem Company by way of dividends, and by sale under the Consolidated scheme to the Consolidated Gas Company.

9323 Total capital subscribed in cash, and issued for construction (cash)		$1,720,000 00
Issued by appreciation		200,000 00
Issued by scrip dividend		80,000 00
Total		$2,000,000 00
Total dividends paid to stockholders, as per account page , exclusive of $80,000 scrip dividend		$2,249,917 25
Increased valuation beyond stated value of real estate, plant, mains, services, etc., in books of Harlem Company, and the appraisement to Consolidated Company:		
Balance of separate account		1,243,986 97
Appreciation	$1,312,733 98	
Franchises	469,082 54	
		1,781,816 32
		$3,025,803 49
Liabilities assumed by Consolidated Company:		
Bonded debt	$170,000 00	
Sundry liabilities	168,705 93	
	$338,705 93	
Deduct value of customers' accounts, coal, tools, stores, materials, coke, cash assets, etc.	142,902 44	
		195,803 49
		$2,830,000 00

9324 This being the amount of stock issued by the Consolidated Company, viz.: $3,000,000, as shown by statement page , less liability of $170,000 assumed by the Consolidated Company on account of the bonded debt of the Harlem Company hereinbefore referred to.

The stockholders of the Harlem Company have therefore received for their original investment of $1,720,000 represented by stock of $2,000,000,

Dividends	$2,249,917 25
Consolidated stock as above	2,830,000 09
	$5,079,917 25
Deduct cash paid for stock	1,720,000 00
	$3,359,917 25

Received in cash and stock of Consolidated Company for the original investment.

The foregoing gives a succinct history of the constituent companies of the Consolidated Company, and on page H 1 I give a tabulated statement showing the various capital accounts, the benefits to be. On reference to this statement it will be seen that the total benefits derived by the stockholders from their investment have been, in cash dividends, surplus assets, and stock in the Consolidated Company $79,418,703.26, and in addition thereto the equivalent of the original stock of the new company.

On page H 2 are shown the assets and liabilities transferred by the constituent companies to the Consolidated Company, but collected on their account and liquidation of the current liabilities at the time of the transfer.

9325 It therefore shows that the constituent companies really paid back to their stockholders the working capital of their separate concerns, which in the aggregate amounted to (say surplus assets) $1,707,089 99

Dividends paid for the Manhattan and New York Company included under that head 440,000 00

$2,147,089 89

The various constituent companies were organized in the Consolidated Company at a par value of $39,078,000, which represents, according to the following schedule, the valuation and appraisement of the real estate, mains, services, etc., and other properties and franchises.

9326	New York.	Manhattan.	Metropolit'n.	Municipal.	Knicker-bocker.	Harlem.	Total.
Street mains, valves, etc.	$650,000	$1,083,000	$971,000	$749,000	$744,000	$720,000	$5,217,000
Meters	215,000	367,000	273,000	158,000	69,000	113,000	1,195,000
Services	127,000	350,000	233,000	103,000	81,000	111,000	1,005,000
Plant	2,874,000	3,623,000	2,044,000	1,804,000	980,000	826,000	12,151,000
Real estate	1,607,000	3,563,000	1,474,000	889,000	480,000	604,000	8,617,000
Bulkheads, piers and water rights	250,000	425,000	300,000	200,000	115,000	100,000	1,390,000
Office buildings	100,000	175,000	.....	.....	.....	50,000	325,000
Office furniture	15,000	20,000	12,000	16,000	2,000	5,000	70,000
Laboratories, photometer rooms, etc.	5,000	5,000	5,000	6,000	1,000	2,000	24,000
	$6,143,000	$9,611,000	$5,312,000	$3,925,000	$2,472,000	$2,531,000	$29,994,000
Rights, franchises, etc.	1,417,000	2,329,000	1,863,000	1,175,000	528,000	469,000	7,781,000
Totals	$7,560,000	$11,940,000	$7,175,000	$5,100,000	$3,000,000	$3,000,000	$37,775,000

9327 Furthermore, a certain amount of stock was reserved by the Consolidated Company, amounting to $1,303,000, to be hereafter sold to provide working capital, and a sum of $2,329,000 was also reserved from such valuation of $37,775,000, to be disposed of from time to time in providing for the current obligations and bonds of the various companies.

This stock had not been disposed of at the time your committee commenced its labors, but some of the liabilities had been paid, viz.:

The bonds of the Harlem Company	$170,000 00
Notes of the Knickerbocker Company	450,000 00
Total	$620,000 00

Q. State the cost of the real estate of the Harlem without any structures upon it?

A. One hundred and fifty-eight thousand eight hundred and ninety-nine dollars and eighty-one cents.

Q. State the cost of the plant?

A. Cost of the buildings, retorts, bulkhead and plant, $557,418.10. The cost of meters, $123,895.31. Those were inventoried for less in the appraisement to the Consolidated by $2,649.44 less than this amount.

Q. It is the only instance of under valuing, you think, in the appraisement?

A. Strictly speaking, yes.

Q. I forgot to ask you what was the cost of the New York Company's real estate?

A. The first cost I could not give you of the real estate unless I went back to the books of fifty or sixty years ago. The real estate cost on the reorganization of the company in 1871, about one and a quarter millions, that is to say, it cost according to the reorganization.

9328 Q. That includes an appreciation?

A. Certainly.

Q. You mean it is taken by the new company at that estimation?

A. Yes, in the reorganization.

JAMES W. SMITH, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. Mr. Smith, what have you got there?

A. The dividend lists for the first dividend payable in June; and this the second dividend payable on the 15th, and in progress of being paid now.

Mr. TREMAIN: You will have the books at 10 o'clock tomorrow morning and come yourself at 12 o'clock?

A. Very well.

Adjourned until December 19th.

NEW YORK CITY, FIFTH AVENUE HOTEL,
December 19th, 1885.

The committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain appeared as counsel to the committee.

DAVID PALMER, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. Have you refreshed your recollection concerning the loan transactions between the Consolidated Gas Company and the City Bank?

A. I have sir.

Q. Since your testimony yesterday the treasurer of the company stated that there was an additional loan to that mentioned by
9329 you yesterday, namely, the loan of December 15th for $600,000 less the discount?

A. That was not in the nature of a loan; that was a discount of the paper brought in.

Q. Did you know that yesterday?

A. I did.

Q. Is that the reason you did not mention it as a loan?

A. Yes, sir; we make a distinction between loans and discounts.

Q. It is the equivalent of a loan, is it not?

A. Loans are payable on demand and discount paper lays to its maturity.

Q. But they are both loans under different names?

A. Yes, you may call them loans, if you please.

Q. Without reference to such distinction and inquiring about any advances of any kind whatsoever by your bank to the Consolidated Gas Company, and either by credit on your books to the Consolidated Company or by any other way, please state all of such loans or advances that have been made by your bank during the past few months?

A. February 3rd, 1885, we loaned the Consolidated Gas Company $400,000.

Q. Was that on any collateral?

A. Their notes as collateral, their demand notes.

Q. Were those demand notes secured by collateral?

A. No, sir.

Q. When were those notes paid, or any of them?

A. On the 6th of March $200,000 was paid; on the 17th of March $200,000 was paid.

Q. The next such transaction was when?

A. June 30th, a loan of $75,000.

Q. When was that paid ?

A. On the 8th of July.

Q. Was that secured by collateral?

A. Their demand note without collateral.

Q. When was the next one?

A. October 2nd, $300,000.

9330 Q. Was that on collateral? A. Their demand notes.

Q. Three demand notes for $100,000 each, without any collateral to secure them?

A. Yes, sir.

Q. You took the paper without any collateral; by that you mean to imply that among banks a demand note made by the drawer is regarded as a collateral in any well-conducted bank?

A. In some cases it is, sir.

Q. Is that generally the case?

A. No, sir; not generally.

Q. Do you recall any other instance in the past year or two where your bank has loaned on the demand note of the drawer, without any collateral?

A. I cannot recall any particular instance; we may have done so, however.

Q. This loan of October 2d, of $300,000, was repaid yesterday by your charging it up as you yesterday testified—is that the fact?

A. Yes, sir.

Q. After October 2d, was there any other loan or advance?

A. Since October 2d the bank has discounted paper for the Consolidated Gas Company.

Q. What date?

A. December 15.

Q. Who conducted that transaction?

A. The president.

Q. Mr. Pyne?

A. Yes, sir.

Q. With whom was it conducted?

A. I do not know.

Q. With Mr. Smith?

A. I had nothing to do with the transaction; I do not know any thing further about it than the facts I have stated.

Q. Do you know what person saw Mr. Pyne about it?

A. I do not.

Q. Did you see the collateral that was taken for the notes thus discounted?

A. The paper was handed to me and signed by Mr. Smith, treasurer.

9331 Q. You have not that paper with you, have you?

A. No, sir.

Q. Have you any objection to stating its contents, if you are able to do so?

A. No, sir; the purport of the paper was to pledge the current receipts of the gas company for the payment of those notes upon their maturity.

Q. Is that all there was of it?

A. That is all there was of it; yes, sir.

Q. That was the only collateral?

A. The only collateral; I would say, however, that that paper was indorsed.

Q. The notes were indorsed?
A. Yes, sir.
Q. By whom?
A. James W. Smith.
Q. Individually?
A. Individually.
Q. Was that indorsement secured by any collateral?
A. Nothing further than I have stated.
Q. What was the balance yesterday morning when the $300,000 loan was charged off, immediately before it was charged off?
A. I think it was about $360,000 or $370,000.
Q. And if it was charged off, the balance was only about $60,000 or $70,000?
A. Yes, sir.
Q. To the credit of the Consolidated Company?
A. Yes, sir.
Q. Do you know the balance this morning?
A. No, sir.
Q. In any transaction had between your bank and the Consolidated Gas Company, or any of its officers, has stock of the Consolidated Gas Company been received by your bank as collateral?
A. We may have made some small loans to General Roome, I think. He is president of the company; on the stock of the company.
Q. Any others?
A. No, sir.
Q. Ever made any to Mr. Smith?
A. No, sir.
Q. Ever made any to Mr. Francklyn?
A. No, sir.
9332 Q. Ever made any to Mr. Lees?
A. No, sir.
Q. Ever made any to Mr. Day?
A. No, sir.
Q. Ever made any to Mr. Gawtry?
A. No, sir.
Q. Ever made any to Mr. Pyne?
A. No, sir.
Q. When was this made to General Roome?
A. It may have been two or three months ago.
Q. Was it not longer ago that that?
A. I cannot recollect the time exactly.
Q. And the amount?
A. I think it was somewhere in the neighborhood of $5,000 or $10,000.
Q. Have you refreshed your memory since yesterday whether you made loans on Consolidated Gas stock?
A. We have made no loans on Consolidated Gas stock except a few shares of that stock may have been sent in to us by customers with other securities as collateral for loans.

JOHN W. SMITH, being duly recalled testified as follows:

Examined by Mr. TREMAIN:

Q. Do you pay for your labor in checks or in currency?

A. It is handed to the workmen in currency; the majority of wages are paid in that way.

Q. The current expenditures every month for wages and materials are generally between, what minimum and maximum?

A. I would say from $250,000 to $400,000, average about $325,000.

Q. That includes salaries, expenses, supplies, etc.?

A. Yes, sir.

Q. Have they paid for November, those sums all expenses and all supplies?

A. As usual we get all.

Q. Have they actually been paid at this date?

A. The same as usual, they have been paid.

Q. Have the actual expenses for the month of November for wages, materials and supplies all been paid to this date?

9333 A. They have nearly all been paid; though the supplies for October and for half of September have been waiting for a contract to be completed.

Q. I notice in the bank accounts a considerable irregularity in the total amount of checks drawn apparently for the payment of current expenses, wages, supplies, etc., is not that true?

A. I do not know; there is no irregularity for November, if there is for the other month.

Q. You think they are all paid in the regular way for October and November?

A. Yes, sir.

Q. What is the liability of the company, the present outstanding liability for supplies?

A. It is impossible to state.

Q. Is it not over $200,000, the coal and supplies?

A. I do not think it is over $25,000; thirty days from now I may be able to tell you; the bills are not in; there is nothing irregular in the November payment.

Q. I notice that during the month of November the general drawings on your bank account are in excess of $500,000 and for half the month of December the general drawings are less than $50,000?

A. That is the majority of the bills for supplies are paid at the end of the month.

Q. General drawings I notice for the month of October are in your average monthly expenses as you have stated were about $325,000. It appears that you would require for the balance of the month of December about $275,000 more to meet such expense during that month; is not that so?

A. It probably would not be $275,000; I would say it would be about $250,000 on that hypothesis.

Q. Is the substance of it that it would require about $250,000 to meet the current expense for this month of December if you have paid but $500?

A. I know we have paid more than $50,000.

9334 Q. Is the substance of it that it would require about $250,000 to meet the current expense for this month of December?

A. I cannot answer the question.

Q. Is the substance of it that it would require about $250,000 to meet the current expense for this month of December over and above what has been paid?

A. Yes, sir.

Q. I did not in my previous question imply that there was an irregularity in the monthly expense as appears from the bank account but that there seemed to be a considerable irregularity in the average monthly expense. I have not made it up, but I presume your answer is correct that the general average is about $325,000?

A. Yes, sir.

Q. By the bank pass-book and by the bank check-book it appears that the balance of your company at the bank at the end of the business of December 18th, was $911,000 against which you have issued checks for dividends. Can you say about what the total amount for dividend checks is as now issued?

A. Upwards of $1,100,000, I should suppose.

Q. That balance in the bank of $911,000, that includes, does it not, the discount on the $600,000 in notes of December 15th?

A. Yes, sir.

Q. How is it after paying the demand loan of $300,000 which was charged to the account yesterday with interest?

A. Yes, sir, that would be about right.

Q. Under that situation you have checks outstanding in excess of your balance at the bank of upwards of $200,000?

A. Yes, sir.

Q. Therefore, to meet the supply bills about $250,000, as estimated and to meet those checks outstanding of upwards of $200,000, you would require, would you not, about $45,000?

A. It will take that amount to pay.

9335 Q. Will the receipts from gas sales to consumers meet that?

A. Probably not.

Q. Some of those loans due apparently in January, you will, therefore, require, according to your estimate, will you not, for the month of January a sum in excess of $500,000 to meet the January payments?

A. Yes, sir, including the notes that are payable at that time.

Q. It is nearer six than five hundred thousand dollars?

A. It is probably more than $500,000, not $600,000.

Q. That is regardless of contracts for coal?

A. No, sir, that is included.

Q. Will the receipts from consumers during January probably equal $500,000 or $600,000?

A. They will exceed that amount no doubt.

Q. As the proceeds of the excessive consumption of December?

A. A large consumption by reason of the season.

Q. By this testimony it would appear that the company will re-

quire money in December. Has any provision been made for that, or will a loan be necessary?

A. I could not say; I am confident of the ability of the company to provide for their wants.

Q. Has any loan been negotiated?

A. No, sir; no farther loan.

Q. In these calculations there seems to be no reservation of actual funds for working capital. Has there been any action taken in that respect?

A. There has not, sir.

Q. What has the policy of the company designed in that respect?

A. No policy has been formulated as yet.

Q. Are the officers having that matter under consideration?

A. I do not know that any of them are officially; in their minds they may have.

9336 Q. You are authorized to use the stock that stands in your name as trustee for the general purposes of the company?

A. No, sir.

Q. Unless some use is made of that stock, will it not be true that the company will be without working capital?

A. I think not, sir.

Q. That is a matter of your opinion?

A. Yes, sir; that is my opinion.

Q. Is it not true that at the rate of the division of earnings that is exhibited by the present situation, no working capital can be reserved from those earnings?

A. I do not think that is the situation.

Q. Where will the earnings, in your opinion, come from such a reservation. At what period of time will that appear; in your opinion?

A. I have not stated that they would appear from that source.

Q. Have you any opinion as to from what source they will appear?

A. I have, as to what source they might appear.

Q. Explain how it happened that the stock in your name, as trustee or treasurer, was issued in two blocks. It appears by the minutes of the board that two blocks of stock are specifically mentioned?

A. As stated in the resolution, one block of stock was reserved as working capital, and was kept separate for that purpose, and a separate resolution was adopted authorizing this issue.

Q. That was how many shares?

A. Twelve thousand and odd. The other block of stock was reserved according to the articles of consolidation to meet the bonded liabilities of the company, and was kept separate for that reason.

Q. Has any portion of that stock been sold at this time?

A. No, sir.

9337 Q. Have any calls been made or obligations of any character whatever been created for the delivery of any part of that stock?

A. What do I mean to understand by calls?

Q. The question calls for any knowledge or information you may have touching any obligations of any character whatever for the delivery to anybody on any terms whatever of any part of that stock?

A. There is nothing of that sort in existence by any authorized agent or officer or committee or board of trustees of the company.

Q. Do you mean to testify that there has been no paper whatever ever written or given by anybody on that subject within your information?

A. I do.

Q. Are those certificates still held intact as they were?

A. Two blocks of certificates—they are.

Q. Has any application of any kind, or paper purporting to be an obligation, ever been issued by anybody respecting that stock?

A. The answer is the same as the answer to the last question.

Q. It has not.

A. There has not.

Q. Do you know of anything having been issued in paper purporting to be a call upon anybody for Consolidated stock, whether authorized or not?

A. No, I have no knowledge.

Q. Haven't any information whatever?

A. I believe it is a daily transaction in Wall street, as it is in Erie and other stocks.

Q. Name a single party whom you say ever engaged in such a transaction in Consolidated stock?

A. I do not know of any party.

Q. Did you ever hear any party's name mentioned in connection with such a transaction on Consolidated stock?

A. I do not recollect.

Q. What is your best recollection?

A. I have no recollection as to name.

9338 Q. When did you ever hear of such an affair?

A. I do not know that I ever did hear of it.

Q. You was understood to say it was a common transaction in Wall street on the Consolidated stock?

A. I was understood wrong.

Q. Did you ever hear of any such transaction on Consolidated stock?

A. No, sir.

Q. Have you seen Mr. Day within the last two weeks?

A. I do not know that I have.

Q. Have you seen him since the 27th of November, the day after Thanksgiving?

A. I am under the impression I have not seen him since the 25th, the day of the board meeting.

(By the CHAIRMAN:)

Q. Have you any knowledge or information as to where he is or has been for the past week, Mr. Day?

A. I think it was about a week ago I had occasion to consult counsel for the company, and I made inquiries and understood he was

away on a visit to his daughter and away on business; and, if I recollect right, it was Chicago; whether he has returned or not, or whether he went there, I do not know.

Q. Did you ever see, last spring, or at any other time, a printed pamphlet containing extracts from various newspapers quoting so-called legal opinions and other extracts relating to legislation that was proposed last spring; did you ever see such a book or pamphlet?

A. Well, I think I did, sir.

Q. Do you know who was concerned in compiling or printing it?

A. Such a book?

Q. Yes, sir.

A. Yes, sir, I do.

Q. To what book do you allude?

A. To a pamphlet of perhaps two or three leaves of the nature of what you described.

Q. What was its title?

A. I do not recollect.

Q. Who was it printed by?

A. I do not recollect.

9339 Q. Where did you see it?

A. In my office, probably.

Q. Do you know who was concerned in preparing it or distributing it?

A. I cannot answer as to the identical pamphlet you are speaking of, but the one I am speaking of, such a pamphlet was prepared or directed to be prepared in our office.

Q. Who directed it?

A. I saw a part of it; I did not protest against it.

Q. Who prepared it?

A. I could not tell you.

Q. Who besides Mr. Francklyn?

A. I do not know that Mr. Francklyn did.

Q. Did Mr. Gawtry?

A. I am quite sure he did.

Q. What was the nature of the pamphlet you speak of?

A. I should describe it as a brief compilation of legal opinions and extracts from newspaper articles.

Q. Concerning what?

A. Concerning the proposed legislation.

Q. Affecting what?

A. Affecting the gas companies.

Q. Concerning the proposed legislation of last spring for gas companies—it did not quote the bill or any bill that was proposed?

A. I could not say. I should say from the size of the pamphlet that the bill was not printed.

Q. How large an issue of that pamphlet was made?

A. I have not the slightest idea.

Q. Who met its expense?

A. I presume the Consolidated Gas Company.

Q. For what purpose?

A. The question is the answer, isn't it, to meet the expenses?

Q. For what purpose was that expense incurred by the Consolidated Gas Company?

A. For the issue of the pamphlet.

Q. What was the purpose of that issue?

A. I do not know the exact purpose.

9340 Q. What was the object of the Consolidated Company issuing a pamphlet of that kind?

A. I do not know; but I presume it was to put the opinions of lawyers and of the public press, so far as they were in our favor before the public and parties whom we thought should know those things.

Q. Now, as a matter of fact, was any legal opinion absolutely quoted, if so, whose, in such a pamphlet?

A. I think there was, but I don't know whose.

Q. Was the opinion printed in full?

A. I presume so.

Q. Don't you know it was not?

A. I do not.

Q. Do you know whether there was more than one opinion printed?

A. I do not.

Q. Can you name any person whose opinion was printed?

A. I cannot.

Q. Is that the only issue of printed matter with which the Consolidated Gas Company or any of its officers were directly or indirectly concerned, according to your information, at or about that time?

A. That is, to my recollection and information.

Q. Did not the Consolidated Gas Company correspond through its officers, or those interested in it, with persons in different parts of this State on that subject; the subject you have mentioned—you have given the object of the pamphlet?

A. I believe there was such a printed circular sent out; no sir, I do not recollect of any correspondence; I do not know of any correspondence.

Q. There were two; one was sent to certain advertising agents?

A. I don't know any thing about it.

Q. Do you not know of a circular or letter sent to various local gas companies through the State?

A. Not during the pendency of the bill.

9341 Q. Well, when was it?

A. I have stated to you that I did not know any thing about it.

Q. Did you know of such at any time?

A. There was a circular that was sent to gas companies, if I recollect right; it was pending the election.

Q. During what month?

A. I should think the latter part of October.

Q. Under whose name?

A. Charles Roome, and entirely unofficial.

Q. Who was occupied or concerned in its distribution?
A. I don't know, sir.

(By the CHAIRMAN:)

Q. As a matter of fact, Charles Roome was president of the company, he did not do it officially, I understand.
A. It was unofficial.

(By the CHAIRMAN:)

Q. The Charles Roome you refer to was the president of the Consolidated Gas Company at that time?
A. Yes, sir.
Q. Did you know of it at the time?
A. I think I saw the draft of the circular before it was printed.
Q. Mr. Gawtry, also?
A. I don't know.
Q. Do you not know that was done through the gas-light association; I mean, that some circular or printed matter was distributed by them?
A. I don't know it; I never heard of it.
Q. Is that the only instance that you have heard of in which any of -he officers or persons interested in the Consolidated Gas Company were in any wise concerned, touching the subject-matter of the proposed legislation?
A. That is all I recollect.
Q. Did you never hear of any other matter or thing done, or said, or proposed, in that connection?
A. By the gas company?
Q. By any person directly or indirectly in the Consolidated Gas Company or any other gas company?
9342 A. I do not know: we employed counsel to appear before the committee who had charge of the bill urging the gas companies' objections.
Q. Did you employ more than one counsel?
A. For that purpose, one only.
Q. A counsel resident in Albany?
A. Yes, sir; I believe so.
Q. Any other?
A. None other.
Q. Is that the only matter or thing touching proposed legislation that was ever done, or spoken of, or proposed, or considered within your information by any officer or other person directly or indirectly interested in the Consolidated Gas Company*fi* or any other gas company?
A. That is all, to my recollection.
Q. Did you not correspond with the Yonkers Company on that subject?
A. Not to my knowledge.
Q. Or any other gas company?
A. Not to my knowledge.
Q. Or officer thereof?

A. Not to my knowledge.

Q. Do you not know that there was circulated, while the Legislature was in session, some circular on the subject of the proposed legislation, either by the American Gas-light Association, or some other person or persons?

A. I do not know.

Q. Did you ever hear of such thing?

A. I do not recollect.

Q. Do you say there was none?

A. I don't say so.

Q. It has been publicly stated in a widely distributed publication that pressure was brought to bear on members by local gas companies; that the assistance of this instrument was invoked by and through the American Gas-light Association—an organization of gas companies apparently for both offensive and defensive purposes, which professes to see in this bill an entering wedge for
9343 widening legislation; did you never hear of such a matter?

A. Only, I think, as I may have seen it from the book which you quote.

Q. And in no other way?

A. No other way; there is such an association; they are not organized for that purpose; it is composed almost exclusively of gas engineers and for the development of ideas in reference to the manufacture of gas and with regard to new processes and economies; I do not belong to the association; I have never attended any of its meetings although I am fully informed of their aims and objects.

Q. Is that association located here, its headquarters?

A. No, sir; it has met in Chicago, New Orleans, Boston and New York; they have a meeting only annually.

Q. Have they headquarters in any place?

A. I think not.

Q. Who is the president?

A. I think they elect a new president every year.

Q. Who is the president now?

A. I don't know.

Q. Who is the secretary?

A. I don't know.

Q. Who is the treasurer?

A. I don't know.

DECEMBER 19TH—3 p. m.

Hearing resumed.

R. M. C. GRAHAM, a witness called by the counsel to the committee being duly sworn, testified as follows:

Examined by Mr. TREMAIN.

Q. You are president of the Equitable Company?

A. I am, sir.

Q. That company was organized in what year?

A. In 1882.

Q. Under the general Gas Law of 1848?

A. Yes, sir.

9344 Q. On a nominal share capital of what amount?

A. Twenty thousand shares of $100 each.

Q. Representing a nominal capital of $2,000,000?

A. Yes, sir.

Q. Since that time has the Equitable been enlarged?

A. We have commenced the increase of capital to $3,000,000.

Q. Under the statute?

A. Yes, sir; and have called in 45 per cent. of the increase of $1,000,000 which has been subscribed.

Q. When did you begin to deliver gas?

A. About a year ago, sir.

Q. And how many miles of mains are now laid?

A. From 55 to 60; I could not give you the exact number.

Q. In addition to that share capital that you speak of, has any mortgage or have any bonds been made?

A. We have issued and sold a million of bonds, mortgaged the company's real estate and plant and mains and personal property.

Q. What real estate does the company own?

A. Three blocks of land on First avenue, extending from Thirty-ninth to Forty-second street and from First avenue to the river; also, thirty-two lots running between Fifty-eighth and Fifty-ninth street, 300 feet west of Tenth avenue, 100 feet east of Eleventh avenue, which makes the thirty-two lots.

Q. On the latter plot of land have any buildings been erected?

A. We are now excavating for the erection of gas tanks.

Q. The total paid in cash of the original $2,000,000 capital was how much?

A. One and a half million and a balance of stock was issued for the patent process.

Q. Is that a different process from that used by any other company in the city?

9345 A. Yes, sir; we call it the Jerzmanowski lime process, water-gas process; he is our engineer.

Q. The cash that has been paid is represented by what you have stated?

A. Yes, sir.

Q. The balance, fifty-five per cent., of the increased capital, is subject to call, is it?

A. Yes, sir.

Q. When all that which is now subscribed shall have been collected, will all the works which are now in process of construction be paid for?

A. No, sir.

Q. What is the present producing capacity of those works?

A. Two million five hundred thousand cubic feet per day.

Q. What capacity is under construction?

A. Three million cubic feet; we have not commenced on the construction of those works, because we have not obtained full possession of the property

Q. You mean 3,000,000 more, making 5,500,000?

A. Yes, sir; in the summer we would be delivering only a little over 2,000,000.

Q. Your present maximum capacity is 2,500,000?

A. Yes, sir.

Q. What is the total expenditure to reach 2,500,000?

A. Mr. Yalden has the figures there; I never made the figures.

Q. Give it in round figures for the real estate?

A. Three hundred and sixty-five thousand dollars for that block from Forty-first to Forty-second street; then the property on the west side was $171,000, $536,000 is the unproductive property today; about $2,850,000.

Q. So that including the properties of the real estate for that purpose, as recently made by your company, the total expenditure to establish a plant of a maximum capacity per diem of 2,500,000 cubic feet has been in round numbers $2,850,000?

A. Yes, sir.

9346 Q. And this item includes what?

A. Five hundred thousand dollars paid for patents.

Q. By the issue of stock therefor?

A. Yes, sir.

(By Senator ROBINSON:))

Q. To produce 21,000 cubic feet would cost about ten times that—how is that?

A. The increase would be about in the same proportion.

(By the CHAIRMAN:)

Q. So that without the patents it would include $2,350,000?

A. Yes, sir.

Q. Assuming, then, that your plant, upon the basis you have just stated, has cost $2,850,000 for the estimate of a plant of a maximum producing capacity of two and a half million cubic feet per day, would it cost twice $2,850,000 to increase that capacity to 5,000,000 cubic feet per day?

A. It would cost very near that.

Q. Double?

A. It might cost a little less, but pretty near that.

Q. You would not have to pay any more for the patent?

A. No, sir.

Q. It would take $2,000,000 more for you to double your capacity?

A. Yes, sir.

Q. Is that $2,000,000 provided for by the bonds?

A. A very large portion of the bonds were expended; that $500,000 was paid out in cash, and, therefore, a large amount of the bonds had to be sold to do that.

Q. And we understand you to testify you are increasing your producing capacity $3,000,000 more?

A. Yes, sir.

Q. What amount of money do you need to finish them?

A. Seven hundred thousand dollars.

Q. You will more than double the increasing capacity by the expenditure of $1,700,000?

A. No, sir; we will more than double the producing capacity by the expense in all of $2,100,000.

Q. Whether a farther increase would cost about the same
9347 amount of money?

A. Yes, sir; the same ratio, because real estate would always be higher; the last real estate we bought cost us more than the first.

Q. Do you think it practicable to go to the other side of the Harlem river for the establishment of a gas plant, where real estate is less?

A. It has been thought over, but the difficulty of bringing a proper pressure here, the large size mains that would be necessary would more than make up for the price of real estate.

Q. I understood you to say, in answer to Senator Robinson, that the increase would be in about the same proportion when you are doubling or triplicating your producing capacity?

A. Yes, sir.

Q. We understand that you are increasing your capacity from 2,500,000 cubic feet by 3,000,000 more, with the expenditure of only $2,100,000, which is less than double?

A. That difference of $500,000 is only a small difference for one month in the year; because it is only a month; you are brought up in that way.

Q. How much gas do you now deliver?

A. About 2,000,000 cubic feet a night on an average.

Q. And how much of the city *to* you cover by your mains?

A. From Canal street to Fifty-seventh street.

Q. All the way across?

A. No, sir; a very large number of the streets we have not touched as yet, namely, the Third, Second, First, Sixth, Seventh, Eighth and Ninth avenues.

Q. Exclusive of the items that you have incorporated in the total cost of the plant as stated your company has expended, has it not, moneys in the cost of establishing its business?

A. Yes, sir.

Q. Have those moneys thus expended been derived from
9348 current earnings?

A. Latterly during the last year, we have made no profits, for six months in this year; we were two years before we made any gas at all; our expenses are considerably over one-quarter of a million of dollars.

Q. What was your experience in gas manufacturing here in New York?

A. I organized the Municipal Company.

Q. How long were you with that?

A. Until about five years ago; I was president at first, and then a director.

Q. Who succeeded you as the president?

A. For a short time, George W. Gilbert, and immediately afterward Charles G. Francklyn.

Q. What was its capital when you left?

A. One million dollars when I left.

Q. Has that million been paid in cash?

A. Not all, at par; about $800,000 at par was paid in.

Q. You have had practical experience in the establishment of gas plants and the manufacturing and supplying of gas?

A. I don't make too much claim; other people are better judges of that than I am.

Q. You have had practical experience in those departments of occupation?

A. Yes, sir.

Q. Is there in your opinion, any minimum and maximum percentage that would be capable of representing a fair average for an annual depreciation of a plant used in manufacturing and supplying gas?

A. I have figured it at twelve and one-half per cent. from my experience.

Q. The amount would represent a fair proportion of capital or of earnings that must be set apart per annum to represent the expenses of keeping the plant in good order?

A. If it was possible to set it apart, but it is not always done.

9349 Q. But taking one year with the next and assuming that the plant is continually in use, it would have to be replaced according to your calculation about once in eight years?

A. Pretty generally, largely liable in that time; of course, not the real estate.

Q. Do you know of any party of experience in that line of occupation who has, as a matter of record, expressed a different opinion?

A. I do not, sir.

Q. In the estimate of profits, as for instance, in determining what is the actual profit earned you would as a man of experience in such affairs always allow for an estimate at the rate you have stated?

A. I do, sir.

Q. Can you state as the result of experience of the Equitable Company for the past two years?

A. We have only had the experience of one year.

Q. Can you state as the result of the experience of the Equitable Company, what is the fair cost you have found to be the cost of gas in the holder as produced by your company?

A. From forty-five to fifty cents, sir.

Q. The cost of distribution depends, does it not, in a large part upon the number of customers and the extent of distribution?

A. It depends upon the extent and the cost of distribution of gas and the number of customers you have to care for; we have to run at the beck and call of every old woman; sometimes run half a day to collect a thirty-five cent bill; our cost of distribution, I think, I said, last year from sixty to sixty-five cents; what we may reduce it to later on, I do not know.

Q. Does that include an allowance for depreciation, for wear and tear, taxes and expenses?

A. No, sir.

9350 Q. In your opinion, does the diminution in the price of gas increase the custom?

A. No, sir, not below its present price; the people of New York are getting more light for less money than any other people in the world.

Q. Do you know whether the total consumption since the consolidation and since the price has been fixed at $1.75 has been more or less than it was before?

A. The total consumption increases every year whatever the price may be; I think the Consolidated are delivering as much gas today as before the Equitable commenced business.

Q. So that there is plenty of room for competition?

A. Yes, sir, so far as we are concerned.

Q. It is to the interest of the Equitable Company that the present price of gas should be maintained?

A. Yes, sir.

Q. So long as it is necessary, then, for the interests of the Consolidated Company that the price of gas should continue at the price they have fixed it as at present, whether or not, the interest of the Equitable in that respect is in common with the Consolidated?

A. To that extent, yes.

Q. Is it not the fact that the price of gas was fixed at $1.75 at or about the time the Equitable commenced to supply it?

A. It was not until then.

Q. The two events were co-existent in the fall of 1884, were they not?

A. Yes, sir.

Q. The Equitable had previously made a contract with the city?

A. Yes, sir, in which contract the price was fixed at $1.75 to small consumers and $1.50 to the city and the city lamps at $12.

Q. Did your company pay the city for that contract?

A. No, sir, we paid them twenty cents for every foot of trench we opened.

9351 Q. It was after that contract had been made whereby you agreed to supply gas at the price named that the Consolidated price was reduced?

A. Yes, sir.

Q. Heretofore, the price of the constituent companies had been $2.25?

A. Yes, sir.

Q. We understand, then, that you mean the reduction in the price of gas was accomplished by reason of the Equitable competition and that contract which was made?

A. It was in consequence of that contract with the city.

Q. You refer to the reduction in the fall of 1884?

A. Yes, sir.

Q. From $2.25 to $1.75?

A. Yes, sir.

Q. Now, by that contract, was any standard of illuminating power or of quality or of purity or of all three elements established?

A. It was, sir. We were to deliver gas of not less than twenty candle power.

Q. As a matter of fact, you delivered gas from what candle power?
A. From thirty to thirty-two.
Q. What was the standard established as to purity and quality?
A. There was nothing said as to purity or quality in the contract.
Q. Is there any standard your company has established as to quality and purity?
A. Well, we have no fixed standard, sir; I could give you the component parts of our gas.
Q. I do not mean that?
A. Our thirty-two candle gas is pretty nice gas. There is no such gas in the world that I know of. The test of Mr. Love will tell you of what it is composed.
Q. All of the contracts of the city provide for a standard of purity?
A. No, sir. The contract for lighting the city was given out the other day. The Consolidated bid sixteen candle, $1.50. We bid for twenty-five candle gas at $1.40, but we have to bid for twenty-five candle under our contract.

9352 (By the CHAIRMAN:)

Q. How is the intrinsic value of gas affected by increased candle power?
A. Increase of light, in its intrinsic light, increased by the squares of candle power. Its value is measured by the diminution of light.
Q. Don't you think the illuminating power of gas ought to be taken into account in determining its price?
A. In every account; in London the London Gas-light Company deliver gas of less than sixteen candle power at three and three pence; they might better pay New York companies the prices charged; it would be cheaper than the gas they have in London at three and three pence.
Q. Is there any other company that furnishes gas of equal candle to yours?
A. They don't do it; they can.
Q. There is no motive for it?
A. Not at all.
Q. Is there any reason, in your opinion, why the standard of gas to be delivered should not be fixed by a public officer, or in some other way, established method, by law?
A. It has been fixed in other States, but the laws have always proved a nullity; fixed in New Jersey and Massachusetts, and they do not pay any attention to it.
Q. Is it not true that where the candle power has been fixed by officers charged with that discretion, that the gas supplied has equaled the standard in illuminating power?
A. Yes, sir.
Q. In respect to purity, we observe that in the contract made between the city and the New York Company in the spring of 1884, there was a provision of the following effect: "As regards purity, the gas shall be free within limits not injurious to the public health from ammonia and sulphuretted hydrogen, and of other sulphur and nox-

ious compounds;" is it not, in your opinion, reasonable to
9353 establish, either by law or by some public officers charged with appropriate discretion, some standard of purity, either of that sort or of some other character?

A. Perfectly so; no trouble about it.

Q. As a matter of fact, a well regulated company would prescribe for its limits something of that character?

A. Yes, sir; they do in the cities.

Q. If the price of gas is to be regulated in any respect by law, should not, in your opinion, the illuminating power and purity be likewise thus regulated?

A. Most decidedly.

Q. In that respect, so far as your experience is concerned, and your own company also, there would be no objection to adequate provision by law to that effect, would there?

A. No objection; none at all.

Q. In your opinion, is there any reason why, either by law itself, or by the exercise of appropriate discretion vested in proper officers, the price of gas, or *l*t least its maximum price should not, from time to time, be limited by law?

A. I do not think there should be any law about the price of gas; the companies will fix that themselves; it is like bread or any thing else; we pay for our right of way; there are immense dangers affecting gas corporations; immediately works may all be burned up, and the men who put their money in there are taking great risks.

Q. As a matter of experience, have there been any explosions?

A. Yes, sir; the Metropolitan lost nearly a quarter of a million dollars by one explosion, a loss of something like a couple of hundred thousand dollars.

Q. Do you know that to be a fact?

A. Yes, sir; Mr. Zollikoffer swore to it; this is mere hearsay.

(By the CHAIRMAN:)

Q. How many years have you been connected with gas works in New York city?

A. Ten.

9354 Q. What explosion do you know of during that time?

A. We had an explosion the other day at Flood Rock; it knocked the bottom out of one of our gasometers, at an expense of $10,000 or $15,000.

Q. Have you known of any other explosion, in your experience?

A. We arrange our business, so far as we can, not to have them.

Q. In your experience, do you know of any other explosion except that?

A. That is all.

Q. That is all you know of in your experience?

A. Yes, sir.

Q. While upon the subject of illuminating power and quality and purity, I refer you to section 11 of the proposed act reported by the last Senate Committee and ask you whether you know of any practical objection to the application of the standards there designated?

A. Well, that suits both water gas and coal gas; there is no objection to that; that would come within the limits and capacity of every company in the city.

Q. That section would be sufficiently elastic to meet all the practical exigencies within your knowledge in New York business?

A. Yes, sir.

Q. Is there any other objection, in your view, to a maximum limitation to be established from time to time of the price of gas than what you stated?

A. It would be unjust; there you say that a coal gas company shall deliver eighteen and twenty-five candle gas and we are giving thirty that is unfair.

Q. There ought not to be a uniform price of varying value?

A. Yes, varying candle power.

Q. Suppose that the standard was fixed at a maximum price per candle power and that that maximum price of gas was established from time to time as the price of material and labor might
9355 necessitate, is there any objection or any reason, in your opinion, why that should not be done, provided, of course, that an appropriate profit on the investment is, at the same time, secured?

A. I do not say the price should be touched, sir; we have made a contract with the city of New York at a price which was far below what others charged; we have raised money and induced parties to go into this enterprise and whether it is a success it is their business, and the price was low; that contract which was entered into by the city has been confirmed and if the power exists in the Legislature to make it $1.25, the same power might make it twenty-five cents and we have to go out of business; that is my reason.

Q. If the rate of dividend on the capital actually invested was fixed so that the investor should always be secured first, in their investment and second, in their income upon that investment, is there any reason, in your opinion, why *they* should not be some limitation somewhere upon the price to be charged to the public for a uniform article?

A. I must say I do not want to agree to that; I cannot, because I am a native born American citizen, not a Russian, and I do not feel like having the business interfered with; if we find we can next year reduce the price of gas, we will do it; but I do not like to be crowded into it by legislation; I do not say it is wise to do it.

Q. What rate of income, in your opinion, provided it be reasonably assured to the investors, is fair and equitable upon gas stock?

A. From ten per cent. to fifteen per cent., sir.

Q. What have you to say as to the relative merits of the gas that was furnished by New York and Manhattan Companies, and that is now furnished by those old works under the name of the
9356 Consolidated Companies in the same section of the City?

A. The New York Company is now making water gas; the Manhattan have improved their candle power materially of late.

Q. Do you know of any reason why the candle power of the New York Company should be as low as twenty-two now?

A. About twenty-four.

Q. Twenty-two or twenty-four candle power while that of the Municipal and Equitable and Mutual is in the neighborhood of thirty or thirty-two?

A. I do not know what they are doing; I never was in their works in my life.

Q. Is there any reason practically why there should be that difference in the gas furnished in the different parts of the city?

A. Oh, no, sir; no engineering difficulties.

Q. Has there been any reduction of your capital stock?

A. No, the Equitable owns the patents for the United States.

Q. Does it cost the same to produce coal gas of a given candle power illumination as it does to produce water gas of a higher candle power illumination?

A. I know nothing about the manufacture of coal gas; I never made any of it.

Q. On what element does the cost of producing water gas largely or generally depend?

A. Upon the cost of naphtha.

Q. That ingredient is the chief element of the price?

A. Yes, sir.

Q. The other elements are standard?

A. They are water, labor and coal.

Q. In the manufacture of coal gas the element is coal?

A. Yes, sir; the coke or residuum in Paris and London they sell for all that coal costs; there is not so much coke used here.

9357 Q. The dividends are fixed at ten per cent. on the capital stock actually employed and the price of gas be regulated by the cost of coal or naphtha, or both, and the minimum of expense, is there, in your opinion, any reason why such an arrangement should not be satisfactory to stockholders and to consumers alike?

A. I believe they will make that arrangement, yes, sir; it will be very difficult for them to make over ten per cent.

Q. Couldn't they be made to do it?

A. I think not.

Q. Supposing the stockholders have that protection and guarantee, would there be any objection to it?

A. If the State would guarantee that protection and say: Gentlemen, "you shall have ten per cent.," the Consolidated stock would be worth two hundred right off.

Q. Supposing the State should say it should not be more than seven per cent., what would be the result?

A. The law would be inoperative.

Q. Would the companies go out of business?

A. I do not think they would all go out; some of them; it depends upon how they got in.

Q. In your opinion, does it tend to lessen the price of gas to double the nominal capital on which dividends are to be paid?

A. No, sir.

Q. The opposite tendency, as a matter of course?

A. Yes, sir, the oposite tendency, of course.

(By the CHAIRMAN:)

Q. When you say that a certain per cent. is a reasonable per cent. of profit, you mean a per cent. upon that sum?

A. Upon the capital stock of the company.

Q. Do you mean upon capital stock watered by various devices, or the actual stock?

A. Well, so far as we are concerned, we have no watering.

Q. You mean upon the capital put into the concern?

A. I am not proposing any fixed percentage but that would be my mind upon the stock; it is upon the par value of the stock.

9358 Q. Upon stock fairly issued and paid in, not fictitious stock, of course?

A. If there is going to be any law passed which is going to be operative I should like to organize another gas company and buy out the Equitable before any fixed sum—buy out the Equitable's $10,000,000 stock and then we would be ready; but we don't like any such law passed unless we are fixed.

Q. Suppose you had a capital of $10,000,000 and under full headway, you could supply a pretty good share of the city?

A. Yes, sir.

Q. Supposing you had really a hard-pan capital of $10,000,000 paid into the concern, what portion of this city could you supply with gas?

A. I think we could deliver 10,000,000 feet on the longest night of the year any year.

Q. If you had a capital of $20,000,000 could you supply the whole city and more too; and make considerable allowance for future growth?

A. Well, we would try to do it—struggle.

Q. And rather hopeful you would be?

A. Yes, sir.

The CHAIRMAN: The dividend lists were taken by Mr. Smith and he agrees to bring them back to the committee at nine o'clock Monday morning next, and he agrees to be here at one o'clock.

J. YALDEN, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. Mr. Yalden you are prepared to give evidence with regard to the Equitable Gas-light Company?

A. Yes, sir. This company was incorporated in 1882 with an authorized capital of $2,000,000, which was subsequently increased to $3,000,000; it commenced business in 1882 by the purchase

9359 of the patent rights belonging to Mr. Jermananski for $1,000,000 in fully paid shares of the capital stock of the company; Mr. Jermananski then donated $500,000 of this stock to the company for the purpose of providing working capital to build works, etc.

This stock was all sold at par, and paid for in cash.

In addition to the above items $190,000 in shares were issued at par in part payment on contract for the erection of works.

The remainder of the capital, $2,310,000, has all been subscribed

for, payable in installments, on account of which $1,742,247.68 has been paid in cash up to November 30, 1885, $432.32 interest allowed on anticipated payments, leaving a balance still to be paid in of $567,320.

The company has issued besides $1,000,000 in coupon bonds, and owes on mortgage on its real estate and works the sum of $400,000, making the total capital upon which it is at present operating $3,832,680. On the first of November 1885, to which time the accounts were taken out, this item stood at $3,737,865.

The investments for works, etc., against this capital including the $500,000 for patents, amount to $3,381,850.10, and the difference is made up of cash in bank, value of materials on hand, and bills against consumers, due and unpaid, amounting to $350,614.90. Of this sum, however, considerable amounts are being expended for real estate (over $500,000) to provide additional works to increase production.

The company did not commence to produce and distribute gas until the month of December, 1884, and has sent out during the eleven months about 253,118,800 cubic feet and is now producing a maximum of about 2,500,000 cubic feet per diem.

9360 The Equitable is apparently bound to be a very profitable concern for the following reasons: The expenditure and income account, after charging against it all the interest paid, the commissions on the sale of stock and office expenses, and the legal expenses pertaining to the formation of the company, salaries, labor, allowances and taxes up to date nearly balances. There is practically a deficiency up to November 1st of about $34,000, but against that they have sent out gas from the 15th to the 30th of November which will eventually be credited. So, I think it can be fairly stated of the gas sent out to their customers, there is about $335,000 worth. The profit on it, together with the gas that can be estimated from the 15th to the 30th of November, can be fairly stated to have paid not only the work and expense of cost of the gas, but of the expense for the formation of the company; so practically the Equitable Company to-day is beginning, as it were, with a clean sheet and must, at the present prices, commence to make a great deal of money. The statement I make to show that gas at $1.75 and $1.50, the prices of the Equitable, can be made by that company and show a very considerable profit on the capital invested. I think their profit will average at least with this two and a half million maximum at least forty cents per thousand feet net profit for the company, on an average price of $1.60.

Q. One dollar and twenty-nine cents for the actual cost for making and distributing the gas; the forty you mean is for the first years doing business?

A. The expense of making their gas to-day is about forty-six cents, their distribution sixty-four cents; the repairs ten cents per 1,000; taxes ten cents per 1,000.

Q. It is based upon last year's experience?

9361 A. Yes, sir; that would leave them about forty cents profit.

Q. What about leakage?

A. Next year the presumption is that the leakage will be less and

the profit more and the next year's business will be increased and the expense correspondingly less. I qualify my remarks. Here is $335,000 worth of gas charged up to consumers in this period. Here is about the same amount of expense charged against the consumers, but it is inclusive of all the expense for the formation of the company which Graham has testified was $200,000.

Q. So far as the estimate for the year past is concerned, they are all included?

A. Yes, sir; but I am qualifying my remarks for the actual facts of this past year.

Q. So that while they have sold gas for one year they have paid the expense practically for two years?

A. Yes, but their expense account against that gas included all the expense for the formation of the company.

Q. I suppose the accounts show what that preliminary expense includes?

A. Not separately shown; it shows there is nearly $47,000 for leakage expenses.

Q. Have you got anything to indicate what are the items comprising that total of $250,000?

A. No.

Q. An estimated sum to cover preliminary expenses?

A. No, sir; I could tell you nearly what they are.

Q. The subject matter?

A. Interest chargeable from the first day, commissions on sales of stock, office expenses and the legal expenses, and the inspectors for the city and advertising, and taxes; they will amount to $260,000 or $270,000, a good portion of which was spent before they commenced to make and distribute gas.

9362 Q. Many of those items it would seem should be charged to the appropriate accounts to which they relate, should they not?

A. Well, no; I should not say that, not unless they could be held to be a part and parcel of the investment; it should be treated as I before stated.

Q. Was capital stock issued for it?

A. No; not in every instance; the real estate has been paid for wholly in cash.

Q. How, in your opinion, should such an item be treated, as a part of the capital or an expense over one year or more?

A. I am of the opinion that all the expense attending the formation of the company for which there is really no representative value, should form an item of expense to be distributed over a series of years and chargeable yearly against the profits until obliterated; and for the sake of argument, say the one-tenth every year for ten years and not deducted out of the earnings of the first year.

Q. Is it not true that because of the primitive condition of the Equitable business an increase of business that you cannot calculate from their books at what price they could, during the ensuing year, sell gas, and, at the same time, retain for themselves a profit of, say ten per cent. on their investments?

A. It is difficult.

Q. And for the reason stated?

A. It is difficult; the business of the Equitable is increasing very fast and you cannot form an estimate of their income; the records of the Equitable show that the chances were of selling, for the month of December, 60,000,000 feet of gas; but by reason of the Flood Rock explosion injuring their gasometer they had to stop and put in meters and so decreased their index quantity.

9363

FIFTH AVENUE HOTEL,
NEW YORK, *December 21st*, 1885.

Committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain, Esq., appears as counsel to the committee.

W. W. SHARPE, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. What is your residence and place of business, Mr. Sharpe?

A. My place of business is at No. 21 Park Row; my residence is 67 East 130th street.

Q. Who are your partners in the firm?

A. I have one partner, George H. Norman.

Q. What business has been conducted by your firm in the past year?

A. What business?

Q. Yes, sir.

A. The nature of it?

Q. Yes, sir.

—. Advertising brokerage.

Q. I call your attention to a circular to the following effect, and ask you if you remember having sent it out, or having caused it to be sent out by your firm in the spring of 1884. The quotation I read is from the Fulton County *Republican* of November 23d, 1884.

"We have before us a proposition from the advertising agency of W. W. Sharpe & Co., of No. 21 Park Row, New York, offering us four dollars for a publication of the following notice in our own columns as an 'Editorial or Pure Reading Notice:'

"'The New York *Tribune* recently published a letter from that eminent Republican statesman, Clarence A. Seward, opposing the gas consumer's bill now pending in the Assembly,
9364 on the ground that its provisions are self-contradictory. Moreover, as the bill gives the mayor of the city of New York power after four years to appoint three commissioners whose expenses and allowances for clerical hire aggregate $60,000, and as New York usually has a Democratic mayor, Republicans who vote for the bill will be playing into the hands of the Democratic party. Besides, the bill is against public policy, because it is a step towards governmental control of private business enterprises.'

"In this way the Consolidated Gas Companies of New York City

are trying to buy the influence of the country press to prevent the passage of bills in the Legislature to restrain this giant monopoly from robbing the people of the metropolis. These companies enjoy unusual privileges, granted by the people, and when they in turn swindle those who use gas, proper measures should be enacted by the Legislature to restrain their greed."

The question is whether you ever sent out any extract from the New York *Tribune*, in a circular or any other form, from your advertising agency last April?

A. I don't remember such a circular.

Q. Is there any way of refreshing your recollection, to say whether it was or was not sent out by your firm?

A. I don't know that there is.

Q. Your firm is in the habit, is it not, of sending out matter to country newspapers?

A. Advertisement; yes, sir.

Q. Well, was any thing on that subject sent out by your firm last April?

A. I can't say.

Q. What book or books would record it in your business ?

A. I don't know that any book would.

Q. What books or book would record any circular sent out last spring?

A. I have no books that would record such a circular.

Q. What books or book would record any circular of any kind?

A. No books.

9365 Q. Well, do you wish to testify before this committee that no such circular was ever sent out by your house?

A. No, sir; I don't remember such a circular; I do an advertising business and send out circulars, but I don't remember such a circular.

Q. Didn't you send out such an extract from any New York paper on that subject last spring?

A. I don't remember that I did.

Q. Will you testify that you did not?

A. No, sir; I don't send out every thing that comes in there.

Q. Who does?

A. My clerk.

Q. Give the name of the clerk who would give me information on that subject?

A. Am I obliged to make that statement about my business?

Q. Have you any objection to state what clerk would know whether that circular or any circular on any subject was sent out by your firm in April last?

A. Well, I have in this, it was something belonging purely to my business.

Q. Well, have you any objection to answering this question now as to what clerk in your establishment, in the usual and ordinary course of business, would have knowledge of circulars or matter, printed matter, sent out by your firm in April last?

A. Well, I don't know that I have.

Q. Well, then will you please give his name to the committee?

A. Well, I have two or three clerks with me that sent out advertisements at that time.

Q. Well, what are their names?

A. One is John Thomas.

Q. Is he now in your employ?

A. Yes, sir; now in my employ.

Q. And another?

A. James McGraw.

Q. Is he now in your employ?

A. No, sir; he is not with me now.

9363 Q. Where does he live?

A. I don't know, sir.

Q. Is there any other?

A. No, I think that's all.

Q. Would not Mr. Norman have any more information on this subject than you have?

A. No, sir, I think not, sir; he is out most of the time, sir; he does not have much to do with the office.

Q. Did anybody ask you to send out any printed matter whatever, on that subject last spring?

A. No, sir.

Q. You testify positively that no such matter was sent out by your firm last spring?

A. No, sir, I don't testify to that.

Q. Did you ever hear of this circular before, that we are now inquiring about?

A. No, sir.

Q. Do you keep a file of papers in which those advertisements appear, that you have sent to them?

A. Sometimes we do; that depends upon whether the contract calls for copies of the papers.

Q. Have you any recollection of the use of your name for such a circular as I have described?

A. No, sir, I have not.

Q. Do you ever send advertisements to the *Fulton County Republican?*

A. Well, I don't know; we take advertisements for any paper that any one wants to advertise in.

Q. Did you ever send out printed matter to be inserted as an editorial or as reading matter?

A. No, I think not; we might; generally a thing of that sort is an advertisement and is sent out as such.

Q. Well, as we understand your testimony then, there is no record or any thing kept by your firm, in the ordinary course of business, that will show upon examination whether any such circular as I have described and just read to you, has been sent out by your firm, or that will show that it has not been sent out; is that so?

9367 A. Well, we keep a record of the advertisement that goes out; that is, a list of the papers, and names we send them for generally, but as to keeping a copy of that particular advertisement I don't believe we did it.

Q. You keep a copy of the names of the persons for whom you do it?

A. Yes, sir.

Q. Can you refresh your recollection between now and to-morrow morning as to whether you sent out any notice whatever, for anybody, on this subject last spring, and if so, at whose request you sent it?

A. I don't know; I can try.

Q. You have no objection to doing it, I suppose, have you?

A. I don't know that I have if it is proper for me to do so in justice to my business.

Q. You observe that the question I am asking you is not in a compulsory way, but to ascertain if you can?

A. I want to find out whether I have to or not.

Q. If you have any objections please state them, but if you have not the committee would be glad to have you state to-morrow morning whether there is any thing upon the records of your books kept in the usual and ordinary course of business that will show of such a circular or of any circular that has been sent out or that has not been?

(By Senator MURPHY:)

Q. As I understand the witness he states that his office is devoted to sending out circulars and advertisements but that he has no recollection or knowledge or having sent out any circular but as an advertisement; do I so understand you, sir?

A. Yes, sir; that is my recollection now; I say there is business that goes into my office and is sent out that I don't know any thing about; people come in and pay and yet I may know nothing about it.

9368 Q. Did Mr. Thomas ever send out editorial matter or printed matter to be published as an advertisement, to your knowledge?

A. Well, that is difficult for me to answer; I have been in the business for a long time; I might have advertisements running where they put in what they call "reading notices."

Q. Any reading notices of a political character?

A. I would not say positively, but, as I remember now, I am not in the habit of sending out reading notices; that kind of advertising is generally regular advertisements; but there are long time notices sent out as reading matter—that are called reading matter.

Q. We have them published in our Sunday papers here, and they are paid for as advertisements; all the Sunday papers publish them?

A. Yes, sir; I have never sent out any thing that has been paid for—if that is the object of the question—except it was paid for as an advertisement.

(By the CHAIRMAN:)

Q. That is one step; now, do you sometimes send out reading matter, but when it leaves you it goes as an advertisement?

A. Yes, sir.

Q. Whatever the form in which it appears?

A. Yes, sir.

Q. It may appear in the newspaper as reading matter?
A. Yes, sir.
A. And it might appear as an editorial?
A. Yes, sir.
Q. But still you are paid for it as an advertisement?
A. Yes, sir.
Q. It goes out in that way but, in the form, it may be an editorial?
A. Yes, sir; I can't tell how it will appear; it may come out as a full editorial.
Q. That is, so far as you are concerned, it may come out as an editorial?
A. Yes, sir; that is my understanding when I take it.
9369 Q. If I understand you, Mr. Sharpe, you could not say whether or not such matter was sent out, through you, to the country newspapers in the form it may be in an editorial, but really as an advertisement for which you have received due compensation; you could not say whether that occurred or not from your present recollection?
A. No, sir; but I think I never sent out anything but has been paid for.
Q. That is the extent of your recollection?
A. Yes, sir.
Q. Whatever was sent out in advertising form and whatever subject you were paid for as an advertisement?
A. Yes, sir; and the papers published it as such.
Q. The papers to which you sent it?
A. Yes, sir; as an advertisement.
Q. Now, could you, by looking at your books, tell whether through you, in the carrying on of our form of business, communications were sent to the country newspapers in respect to the gas bill of last winter?
A. Well, I don't know; I can look; that is the best I can promise without making an examination.
Q. You could not say certainly whether the books will show it or not?
A. No, sir; I could not.
Q. But it is possible that they would?
A. Yes, sir; they might show an advertisement of that kind if such a thing was sent.
Q. And might not; that's about the amount of it?
A. Yes, sir; they would not show any circular, probably, but give some name or some word perhaps.

(By Senator MURPHY:)

Q. Just a memorandum?
A. Yes, sir.

(By the CHAIRMAN:)

Q. What is the name of that book?
A. The Record.
9370 Q. Any objection to bring that here to-morrow morning for April last?

A. Yes, sir; unless compelled to; belongs to my business and we have to use it all the time.

Q. The Record for April would not be in use for an hour to-morrow morning, would it?

A. It might be and it might not.

(By the CHAIRMAN:)

Q. Is that book now in use, Mr. Sharpe?

A. It might be.

Q. We should not think of putting any thing on the record unless it was something pertinent to the thing we are inquiring about?

A. All right, sir.

C. H. BOTSFORD, a witness, called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You reside in New York city?

A. Yes, sir.

Q. State what time, if any, you have devoted toward the examination and study of topics connected with gas companies?

A. I think about two years of rather close application.

Q. Up to what time?

A. Well, I might say to the spring of 1884.

Q. Have you also written upon that subject?

A. Yes, sir.

Q. Are you the gentleman whose name appears as the writer of an article in the *North American Review* for August, 1885?

A. Yes, sir; of the August item; and also to the New York *Tribune* previous to the spring of 1884, a series of articles on the gas question in this and other cities.

Q. You are called as a witness in consequence of some compilations that appeared in articles in the New York *Tribune* many months ago. In these compilations we observe some statements touching the market values of the stock of the constituent
3371 companies entering into the consolidation. Did you personally make an examination of the recorded values in 1879, or thereabouts, of the shares or of the capital stock of the New York, Manhattan, Municipal, Metropolitan, Harlem, Mutual and other companies?

A. I had compiled a table on the subject, which in substance appeared in the New York *Tribune,* I have heard, under date of March 14, 1885.

Q. From what sources did you make such compilations or gain any information touching such values?

A. I made an examination of the tax books, tax returns of the different companies, in the tax commissioner's office, and from the sworn statements of the managers of the constituent companies, or of the several companies; compiled figures which I afterward compared with the quoted prices of the stocks at a cotemporary period in the American Gas-light Journal, and the Financial Chronicle and the Daily Indicator.

Q. Was it the fact that the prices of those stocks were currently published in one or more of those publications, and if so how often?

A. The quotations were made weekly in the American Gas-light Journal, and quotations were made weekly in the Financial Chronicle; I think my compilations took the weekly estimates of the reporters of those journals, of those papers.

Q. Was there a wide range in those quotations as respects each of the companies, or individually, at various times, or were they comparatively constant and uniform?

A. Do you refer to a single year or a series of years?

Q. I refer to a short period in any one year at about 1879, or prior thereto?

A. I think that the quotations of the various city gas-light stocks were lowest about, from about the spring of 1880, or say
9372 December, 1879, prior to the formation of the so-called pool; these lowest quotations I take as the basis of my calculations.

Q. And they relate to what period of time?

A. Relating to 1879 and 1880—during the year 1879, I think, I may say; it must be explained that the companies were in the habit of making returns to the tax commissioners at as low a valuation upon their stock as the market gave them, for the purpose of getting the minimum of taxation.

Q. Those returns state the market value of the stock or capital over the signatures of the proper officials?

A. Yes, sir.

Q. And your tables of compilations were made, were they, from that source?

A. Perhaps not entirely.

Q. Partially from that source?

A. Yes, sir.

Q. And also from the stock quotations for the year 1879, is that so; is that the fact?

A. Yes, sir.

Q. Taking an average of those stock quotations?

A. I think I took them at one period, sir.

Q. When you had ascertained the quotations of a particular stock how did you draw that in arriving at the total market value of the other capital?

A. Multiplied it by the alleged number of shares as appear by the statements of the financial officers, of the officials, and the statements of the finanacial papers.

Q. That is the method of your compilation?

A. Yes, sir; that is it.

Q. Now, by that method and from those sources what did you compile the market value of the capital of the New York Company to be?

A. On a par of $4,000,000; market value $3,000,000.

Q. And of the Manhattan?

A. On a par of $4,000,000—$5,300,000.

9373 Q. And of the Harlem?

A. Seven hundred and thirty-eight thousand dollars.

Q. Of the Municipal?

A. The Metropolitan is the next—$2,825,000; I have the figures of the Mutual; do you wish that?

Q. Leave that; the Knickerbocker?

A. The Knickerbocker, as appears by the tax estimate, had no market value; therefore, I did not rate that.

Q. The Municipal?

A. The Municipal, $2,070,000.

Q. Par.

A. The par I am not sure, but I think $2,000,00 at that time.

Q. The Mutual?

A. The Mutual $2,500,000; that is the quoted value.

(By the CHAIRMAN:)

Q. Now, the par value; deducting the Mutual, what is the total of the constituent companies in the Consolidated.

A. According to the dates which I have here $13,933,000; I have not footed them up (footing up figures); that is correct; that total is correct according to my footing.

Q. If you have the same calculations, compiled from the same sources, for the year 1884, the Committee would be glad to have the results?

A. I made the calculation on the first of July, 1884.

Q. From what data?

A. From data of the same sort that I had in my possession, and found them as follows for the same companies: New York $6,080,000, Manhattan $11,360, Harlem $2,160,000, Metropolitan $5,850, Municipal $6,000,000, making a total of $31,500,000; that excludes the Mutual.

(By Senator MURPHY:)

Q. You got that, Mr. Botsford, from the tax office?

A. These, I believe, were compiled from the quotations of the date which I named, and from the American Gas-light Journal and the Financial Chronicle.

9374 Q. You didn't get them from the tax books?

A. No, sir; these appear to be the right quotations of that day.

Q. Are the quotations made in your book made from the tax books?

A. Principally.

Q. What is the rate or the system of assessment of the Board of Tax Commissioners; do they tax up to the full value, or proportionately?

A. They take the market value of the stock, sir, and then deduct their real estate to fix the basis upon.

Q. On what basis do they assess real estate?

A. I speak not from absolute knowledge but from what I understand to be the case—at about seventy-five or eighty per cent. of its supposed value; that question was brought up in the courts in the taxation of the gas companies; they desired to get as much for their real estate as possible, so when the reduction was made the taxable

capital was so much less; so some companies chose that method; they had to pay for the privilege; therefore, in some cases the real estate is figured very close to its absolute value; in order to explain that I might have to go on and say they would take the values, the cost values, of their real estate and plant and carry it in their books, and take those totals on from year to year, adding the accumulations of value every——

Q. That is not what I want to get at; I want to know simply whether the record that you got has been taken from the tax books, and you reply by saying the companies put the estimate upon the real estate at a higher figure in order to balance it in consolidation; is that it?

A. No, sir; that is not what I wish to be understood as saying; you asked me how the date I have was arrived at, and what the method of taxation was, and I said in the case of the gas com-
9375 panies there was an anomalous state of things; that some companies put their real estate in at the cost value on their books, and the other companies didn't quote the——

Q. You say "put in"; where did they put it?

A. In their returns; so, when you asked me if their real estate was put it at its value——

Q. I asked what the Board of Tax Commissioners assessed it at?

A. I would reply that two methods were used, for the reasons I have stated.

Q. I asked you the real estate; there is only one method; that is for the Board of Tax Commissioners to assess it at sixty-five, seventy or eighty per cent.; is that your answer?

A. Yes, sir; from sixty to eighty per cent.; and, although the assessments are made upon actual values, it has been my observation that the alleged values are carried upon the company's books, and enter largely into the calculation.

Q. I am not speaking of the alleged values; of the actual values as carried by the Tax Commissioners——

(By Mr. TREMAIN:)

Q. We have those returns here, and it will be observed also that the market value is given; the real estate that is put on those returns by the same officers of the company is deducted from that market value, and that real estate of course includes the structures and plant of various kinds, and mains, in many instances, which are held by the gas companies to be real estate and taxable as such; now, how do the commissioners get at the actual value of the real estate; does that appear by this testimony?

A. That does not appear by this testimony; I have made the compilation——

Q. Now, in order that there may be no possible misapprehending, the testimony you have given upon this subject, do we under-
9376 stand that your figures as to values of the other capital are quite independent and exclusive of any consideration whatever touching the values of the real estate, as given either by the officers of the company or by the taxing authorities?

A. Certainly; it is entirely independent; if you will allow me I could explain my testimony about the——

(By the CHAIRMAN:)

Q. You think that will help us, Mr. Botsford, in our work; if you think it will, state it?

A. The Mutual Company in making their tax returns always taxed upon the stock which they issued, not at par, but at fifty cents on the dollar, and that explains what I had to say as to the differences in taxation; they didn't take the market value, but the figures of the stock issued for original.

(By the CHAIRMAN:)

Q. Mr. Botsford, at what time was the market value of the stock of the several constituent companies $13,933,000?

A. Well, sir, as those returns were made to the tax commissioners upon an alleged market value of the stock during the year for which the whole of that tax was to be collected, it would be impossible to say at what date they were at that value. From my own knowledge I should say about the last of December they would have footed up to these totals—the last of December, 1879.

Q. Well, that approximates it?

A. Yes, sir.

Q. Now, I understand you that in July, 1884, the market value or capital stock of the same companies to be $31,500,000?

A. Yes, sir, a difference of $17,567,000.

Q. How do you account for that difference?

A. I account for it by the fact of the increase in the price of gas from $1 per thousand and less to $2.25.

Q. How do you account for that difference in increase?

A. By the combination.

9377 Q. The so-called pooling arrangement?

A. Yes, sir.

Q. And you think that was the object and the effect of the pooling arrangement?

A. Undoubtedly—increase in rates.

EDWARD J. MACNIVEN, a witness called by the Counsel to the Committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are in the employ of W. W. Sharpe & Co., advertising agents, 21 Park Row?

A. Yes, sir.

Q. You have brought here to-day, at the request of the Committee, two books which have been used by them in the usual course of their business?

A. Yes, sir.

Q. How do you designate those two books?

A. One of them is known under what we call the specimen book; samples of our advertisements are kept in that.

Q. Does that contain samples of advertisements that have been sent out during the period it covers?

A. Yes, sir.

Q. Then that book relates to the period of April, 1885?

A. Yes, sir, 1884 and 1885.

Q. You call it a sample ledger, do you not?

A. No, sir, just specimen book.

Q. And the other book, what do you call that?

A. That is the bill-book.

Q. Bill-book?

A. Yes, sir.

Q. Who keeps that book?

A. The bookkeeper.

Q. What period does the bill-book cover?

A. I can't say, gentlemen, having nothing to do with it.

Q. Just look in that book and see whether it relates to the ordinary business done by that house during 1885?

A. Yes, sir, it does.

9378 Q. Look in it and see if there are any entries for May, 1885, relating to the Consolidated Company—Consolidated Gas-light Company, and if so, please state the pages?

A. Pages 386 and 387.

Q. What is the date of this bill on pages 386 and 387?

A. I believe it is May 11; I can only see half of it.

Q. On what page in the specimen book is found the specimen to which this bill on page 386 relates; pages 386 and 387?

A. On page 351.

Q. I would like to have the extract to which you allude on page 351 of the specimen book, and the bill to which you allude on pages 386 and 387 in the bill-book read in evidence, and I request you to give proper instructions to have a copy made so as to have the same put in the record; does not page 322 of the bill-book also relate to the charge to the Consolidated Gas-light Company on April 17?

A. I don't know any thing about that.

Q. Does not that entry in your opinion relate to the specimen in the specimen book at page 335?

A. Yes, sir.

Q. This bill at page 322 of the bill-book relates to an advertisement in the *Commercial Advertiser* of April 17, 1885, does it not?

A. Yes, sir.

Counsel requests that the extract of advertisement alluded to on page 322 of the bill-book, and extract therefrom covering the same, be at the proper time placed in evidence.

FIFTH AVENUE HOTEL,
NEW YORK, *December* 23, 1885.

Met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

9379 Henry E. Tremain, Esq., appears as counsel to the committee.

LOUIS M. BERGTHEIL, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. Did you make a copy of the several parts of the two books produced by W. W. Sharpe & Co.; book called specimen book and book called bill-book?

A. I did.

Q. Did you compare these copies with the originals that were produced in evidence?

A. Yes.

Q. On Saturday?

A. No, on Monday, the day before yesterday.

Q. Are these copies of the extract that were then identified?

A. Yes.

Q. And read?

A. Yes.

Counsel here produces in evidence the sworn copies of the entries in the books and states that they were shown to the witness Thomas yesterday.

WITNESS adds: I ought to say that two of the copies were made by me and the other by another clerk, but I compared all of them with the originals.

Copy of excerpt from paper pasted on page 351 of specimen book, 1884-1885, of Messrs. W. W. Sharpe & Co., advertising agents, of 21 Park Row, New York City.

Excerpt subscribed. Order of April, 1885.

Republican Assemblymen who vote for the Gas Consumers' bill now pending will be strengthening the Democratic party in New York city, because the bill gives after four years the appointment of the three commissioners created, whose salaries and allowances
9380 for clerk hire aggregate $60,000 to the mayor who, as New York is strongly Democratic, is usually a Democrat. That eminent Republican, Clarence A. Seward writes to the New York *Tribune* that the provisions of the bill are self-contradictory.

Besides, the bill brings what should be a private business enterprise into politics, and by fixing the price of gas destroys competition.

Copy of excerpt from newspaper pasted on page 335 of specimen book, 1884-1885, of Messrs. W. W. Sharpe & Co., of 21 Park Row, New York city.

Excerpt subscribed, Commercial, April 17, 1885.

RIGHTS OF GAS COMPANIES.

To the Editor of the Commercial Advertiser:

A member of the Gas Consumers' Association argues under the above heading in your issue of yesterday that, because gas is a modern necessity, gas companies should be under legislative control, as provided by the pending Gas Consumers' bill. But why stop at the gas companies, if your correspondent argues correctly. Mr. Sherwood, the president of the association, is in law an inn-keeper, Mr. Thurber, who gives the bill his support, is interested in supplying the public with canned goods. Inns and canned goods are modern necessities. How would Mr. Sherwood like to have a commission run his inn, or Mr. Thurber enjoy having a commission take charge of the sale of his canned goods at prices fixed by the Legislature?

JUSTICE.

Bill-books—pages 386, '7 of bill-book of Messrs. W. W. Sharpe & Co., of 21 Park Row, N. Y. city.

MAY 11, 1885.

Consolidated Gas-light Company, to reading notices, one time, in following papers:

9381	Wellsville, N. Y., Reporter	$6 00
	Olean, N. Y., Times	8 00
	Auburn, N. Y., Advertiser	10 00
	Elmira, N. Y., Advertiser	8 00
	Norwich, N. Y., Telegraph	6 00
	Hudson, N. Y., Republican	6 00
	Delhi, N. Y., Republican	6 00
	Poughkeepsie, N. Y., Eagle	6 00
	Akran, N. Y., Breeze	6 00
	Watertown, N. Y., Times	8 00
	Lowville, N. Y., Democrat	6 00
	Rochester, N. Y., Union	8 00
	Lockport, N. Y., Union	8 00
	Syracuse, N. Y., Journal	12 00
	Canandaigua, N. Y., Times	6 00
	Goshen, N. Y., Democrat	6 00
	Albion, N. Y., American	6 00
	Oswego, N. Y., Times	8 00
	Troy, N. Y., Press	12 00
	Haverstraw, N. Y., Messenger	6 00
	Schenectady, N. Y., Star	6 00
	Schoharie, N. Y., Republican	6 00
	Watkins, N. Y., Express	6 00

Bath, N. Y., Advocate	6 00
Riverhead, N. Y., News	6 00
Monticello, N. Y., Watchman	6 00
Owego, N. Y., Blade	6 00
Ithaca, N. Y., Journal	8 00
Kingston, N. Y., Freeman	6 00
Glens Falls, N. Y., Republican	6 00
Sandy Hills, N. Y., Herald	6 00
Warsaw, N. Y., New Yorker	6 00
Penn Yan, N. Y., Chronicle	6 00
Mayville, N. Y., Era	6 00
Genesco, N. Y., Republican	6 00
Fonda, N. Y., Democrat	6 00
Utica, N. Y., Herald	24 00
	$270 00

9382 Paid Bangs of Mail Com.

Bill-book, page 322, of Messrs. W. W. Sharpe & Co., of 21 Park Row.

APRIL 17, 1885.

The Consolidated Gas Co., to advertising article in April 17, Commercial Advertiser, nineteen lines, one time..... $19 00

WM. M. BANGS, a witness called by the counsel, being duly sworn, testified as follows:

Q. What is your business, Mr. Bangs?

A. I am clerk in the *Mail and Express* office.

Q. By the books of W. W. Sharpe & Co., you appear to have received a small commission on an advertisement left by you with them in last April or May, the total of the bill being $270.00; do you remember the occurrence?

A. I never left an advertisement with them at that time; I suppose I introduced some advertiser to them; people sometimes come into our office looking for advertising agents.

Q. Who did you introduce on that occasion?

A. What is that occasion?

By General TREMAIN:

I will tell you what that advertisement is; I have a copy of it here; it is a copy of advertisement pasted on page 351 in the specimen book of W. W. Sharpe & Co., order of April, 1885. The following is the advertisement:

"Republican Assemblymen who vote for the Gas Consumers' bill now pending will be strengthening the Democratic party in New York city because the bill gives after four years the appointment of the three commissioners created, whose salaries and allow-
9383 ances for clerk hire aggregate $60,000 to the mayor, who, as New York is strongly Democratic, is usually a Democrat. That eminent Republican, Clarence A. Seward, writes to the New York *Tribune* that the provisions of the bill are self-contradictory,

Besides the bill brings what should be a private business enterprize into politics and by fixing the price of gas destroys competition."

Q. I won't swear that I know the man; I do not remember this advertisement; I had introduced a gentleman last spring who told me he had some reading notices, but I did not read them and I have no idea of what they are.

Q. Do you remember that one item?

A. No; I do not.

Q. And as a consequence of that introduction you received an allowance or commission—that is the usual thing?

A. Yes, sir.

Q. What is that gentleman's name?

A. Mr. Gustav Kobbe.

Q. And his place of business?

A. I do not know; he does some thing for us; I do not know where his office is; he is a general newspaper man.

Q. What part of the work does he attend to—editorial?

A. Yes and reportorial, he does either or both.

Q. He is not a counting-room attache?

A. No.

Q. How long have you known him?

A. I do not know how long; he has been connected with us now about three years.

Q. Is he an attache of the *Mail and Express* now?

A. Yes; and paid for what he does on a salary.

Q. Where is his residence?

A. I do not know.

Q. Did he ask you to introduce him?

A. I do not remember the conversation; he stated he had
9384 some advertisements and asked where he should go.

Q. Did he ask you to introduce him to anybody?

A. No; the question is just as I say, where he should go.

Q. Did he himself ask you to do this or some one else?

A. I do not remember.

Q. Did some one else ask you or speak to you about it?

A. No.

Q. Do you mean to testify that no one else but yourself had any knowledge of the occurrence?

A. No; certainly I do not want to say that.

Q. But to your knowledge no body else knew the circumstances but you?

A. No.

Q. In other words, your connection in the matter began and ended with the introduction of Mr. Sharpe to Mr. Kobbe?

A. I do not know if it was Mr. Sharpe or some one else in his office.

Q. Do you know Mr. Sharpe personally?

A. Yes, sir; very well.

Q. It was probably Mr. Thomas?

A. No; probably one of the concern, but I do not know; I do not remember.

Q. Do you know Mr. Thomas, the cashier?
A. Yes.
Q. Was this circumstance ever mentioned by you or in your presence?
A. No, I think not; I do not remember.

(By Senator GILBERT:)

Q. Are you able to say it was not?
A. No; I am not able to say that; I will not say so.

(By General TREMAIN:)

Q. When was it, to the best of your recollection, if ever it was mentioned?
A. I have no recollection of it having been mentioned until this morning.
Q. *Do* you not go twice to Sharpe's office about it?
A. No, only once; I might have introduced Mr. Kobbe by letter, but I am not sure.
9385 Q. Did Mr. Kobbe tell you what the matter was he wished to have inserted?
A. If he did so before or afterwards, I do not know; I will not take my oath as to the time; he told me it was an advertisement relating to the gas question.
Q. What else did he tell you about it?
A. He told me nothing more that I know of.
Q. Who was present when he told you this?
A. I do not think any one overheard it.
Q. Why should he want to insert an advertisement in relation to the gas question, employed as he was on the staff of the *Mail?*
A. No more than that Mr. Kobbe is a contributor and is paid for what he does.
Q. You did not receive a commission when you first introduced him?
A. No.
Q. That commission could not have been paid until late in May?
A. I do not know when it was paid, sometime afterward.
Q. Who paid it?
A. Mr. Thomas, the cashier.
Q. Directly to you?
A. Yes, sir.
Q. By check or currency?
A. Currency.
Q. What was stated on that occasion?
A. He expressed the wish that I would see him often.
Q. Did he say any thing else?
A. Not that I remember.
Q. What did Mr. Kobbe say at any time about it?
A. I do not know; I do not remember; I- was not of sufficient importance to make a note of it in my mind.
Q. Are you not aware that there was more paragraphs about that time?
A. I am not.

Q. I mean in April?
A. I do not remember.
Q. You have nothing to do with the editorial columns?
A. No.
Q. What is your particular business in the office?
A. Cashier.
9386 Q. You do not write for the paper at all, do you?
A. No, sir.
Q. And did not at that time?
A. No, sir.
Q. Are you positive that these circumstances were never mentioned in your presence to anybody else?
A. I am not positive.
Q. You are not positive?
A. I do not remember.
Q. Is it your testimony that you do not remember any other instance?
A. That is my testimony.
Q. When did you see Mr. Kobbe last?
A. I saw him this morning.
Q. At what time?
A. I do not know.
Q. You do not know; you have an idea, have you not; give the time to the best of your recollection?
A. It was somewhere about 10 o'clock, I guess.
Q. After you were subpœnaed?
A. Yes.
Q. What conversation occurred?
A. I told him I had been subpœnaed and asked him if he had been.
Q. What else occurred?
A. He thought it was a pretty good joke.
Q. What else occurred?
A. Nothing else.
Q. What did he say?
A. As far as I remember he said nothing.
Q. Did he say any thing at all?
A. He said nothing that I can repeat; he did not say any thing that I am willing to repeat.
Q. Now, Mr. Bangs, please tell the committee what he said, to the best of your recollection?
A. He asked me if I had read Sharpe's evidence, and I said yes, and that I had been subpœnaed.
Q. Where did you see him?
A. He passed through the office on his way upstairs.
Q. Your office?
A. Yes, sir.
Q. Is Mr. Kobbe in your employ now?
A. Yes; in the same way; he writes for the paper.
9387 Q. Is he there every day?
A. I think he is.
Q. Is not that the usual way they are employed?

A. They are employed both ways.

Q. And those that are paid according to what work they do are also regularly employed, are they not?

A. His time does not belong to us; he works whenever he pleases and wherever he pleases.

By Senator GILBERT:

Q. But as a matter of fact he works for your paper most of the time?

A. I do not believe he does; he has a great deal of out of town correspondence, I know, in a general way.

By General TREMAIN:

Q. By out of town you mean New York State business, do you not—or what?

A. I do not know, as my knowledge is not exact.

By Senator GILBERT:

Q. His usual place of business is at the *Mail and Express* buildings, is it not?

A. I do not know.

By General TREMAIN:

Q. Is it your opinion as a newspaper man that it is the custom or ordinary course for reading matter to be inserted through advertising agencies?

A. Yes, it is as often that way as any other.

Q. In such cases they are paid for as advertisements, are they not?

A. I do not know, we do not print any of that sort.

Q. I am not asking whether you do or not?

A. Well, I do not know.

Q. How long have you been in the newspaper business?

A. Sixteen years, between sixteen and eighteen years.

Q. Do you know that this was expected to be paid for, or otherwise Mr. Kobbe would not have any interest in it?

A. I do not know to my own knowledge, it is only a case of inference.

9388 Q. In introducing him to Mr. Sharpe you know he would not do so unless he was paid for it?

A. I do not know in what shape the advertisement was, but I knew it was to be advertised; I do not know any thing that I can speak positively about.

Q. Mr. Bangs, did Mr. Kobbe say what this matter was?

A. No, sir.

Q. You did not read it?

A. No, sir, I did not read it.

Q. Was it not an extract from the *Tribune?*

A. I am not aware of that.

Q. Are you or are you not aware whether it was an extract from a newspaper?

A. No, I do not know.

Q. Are you not aware that it was something that Mr. Kobbe had in part prepared?

A. I do not know what my knowledge was at that time, I thought he had prepared it all.

Q. Mr. Kobbe does not prepare advertisements as a general rule, does he? He prepares reading matter, does he not?

A. I do not know all the details of Mr. Kobbe's business.

Q. Say as far as you know to the best of your knowledge?

A. He does not prepare any advertisements for us.

By Senator GILBERT:

Q. So far as you know, or anybody else?

A. So far as I know.

Q. You do not prepare this reading matter yourself?

A. No, sir; I have no connection with this part of the business.

Q. There is a general belief that that sort of advertisements are patent with all newspapers, is there not?

A. I do not know; it is my belief that this rule is not patent with all newspapers; it might be with some, but not all.

9389 NEW YORK CITY, FIFTH AVENUE HOTEL,
December 24, 1885.

The committee met pursuant to adjournment.

Present: Hon. John I. Gilbert, Chairman, Hon. Thomas Robinson, Hon. Michael C. Murphy.

Henry E. Tremain appeared as counsel to the committee.

CHARLES ROOME, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are the president of the Consolidated Gas-light Company?

A. I am.

Q. And you were also president of the Municipal?

A. I was, yes, sir.

Q. General Roome, before commencing the examination, I wish to ask you if there is any line of inquiry which the committee has thus far omitted which you think would be essentially absolute in order to learn the whole truth about the matter under inquiry?

A. I do not know, sir, much about what you have done; I am sure I don't know what you require.

Q. Our object was to see whether there was any side of the question that had occurred to you which had not occurred to us?

A. I can't think of anything, sir.

Q. Do you remember when the first lists or schedules of property of the Municipal Company with a view to consolidation were prepared?

A. I do not.

Q. Well, about how long prior to the summer of 1884?

A. I know nothing about it, General Tremain.

9390 Q. When did you first have any knowledge on that subject?

A. When the committee, the adjustment committee, made their report; I had nothing whatever to do with the adjustment committee.

Q. You mean by the "adjustment," the adjustment of values for the purpose of consolidation?

A. Yes, sir; a committee of one from each company.

Q. You were not a member of the pooling committee, were you?

A. I was not.

Q. Were you not aware that the pooling committee, so-called, had under consideration from time to time, during the years 1880 to 1884, propositions for a consolidation?

A. I believe the pooling committee was formed with the object, if possible——

Q. Well, that I didn't ask—were you not aware of the fact that during 1880, 1883, the pooling committee did consider plans for a consolidation?

A. I did not.

Q. Did you never hear that it did?

A. Never heard that it did.

Q. The pooling committee at a meeting held in December, 1883, appeared to have acted upon or accepted a plan for a consolidation, and to have appointed a sub-committee, with power to call in legal counsel to carry it into effect; did you hear of that at the time?

A. I didn't hear any thing about it; I paid very little attention to the pooling committee.

Q. Well, when it came to a vote in the board of directors, did you vote for the consolidation scheme?

A. I did.

Q. Before voting for it, had you informed yourself of the basis of assessment of valuation of the several constituent companies?

A. I knew nothing except the report of the committee ap-
9391 pointed for the purpose of settling all these matters.

Q. You do not know what principle of valuation upon which they acted, do you?

A. I do not exactly know how to answer that question; I do know that the property of the different companies was valued by the process of the adjustment committee, and I know that they reported to the different companies the calculations at which they had arrived; beyond that I am not able to answer the question.

Q. Do you know how the Manhattan Company had its real estate, so-called, appraised or valued, if at all?

A. I have answered that question before; I know nothing about the operations of the adjustment committee, except as they reported to the board of the company of which I was the president.

Q. When, in their report to the board did they not indicate for the consideration of the Manhattan board, whether the value of the real estate, so-called, which is stated in the appraisement schedules for the Manhattan to be $3,563,000, was simply the value of the lots, or the lots with structures upon them?

A. I can't answer that question.

Q. You mean that you never had any information on that subject?

A. I mean to say I have no recollection further than I have told you, being assured that this committee had taken every means in their power to arrive at a just value of all the property submitted to the different companies for consideration.

Q. But you acted, you relied upon that assurance, did you?

A. With perfect confidence.

Q. General, can you give us the name of the engineer of the Manhattan Company?

A. Charles Roome.

9392 Q. Yourself?

A. I am; yes, sir.

Q. And who is the assistant engineer?

A. We have superintendents of work, sir; we have no such officer known now as assistant engineer; we did have, but he died, and since his death we have had none.

Q. Do you know the name of the gentleman who has filled the office since his death?

A. I presume I do, sir.

Q. Is there any practical engineer at the North river station?

A. There is.

Q. What is his name?

A. Mr. Smith.

Q. Mr. A. M. Smith?

A. A. M. Smith.

Q. And at the East river station?

A. Mr. William Combe; both of whom I brought up to business.

Q. How long have you been engaged in the gas business?

A. Since 1837.

Q. With what company, principally?

A. The Manhattan.

Q. You know of the building of the plants?

A. I planned the works and built them.

Q. Are you acquainted, do you know the producing capacity of the Consolidated Companies?

A. I do.

Q. How many cubic feet of gas per day can these Consolidated Companies now put out?

A. Twenty-eight million feet in twenty-four hours.

Q. Have they plants sufficient to do that now?

A. Can do it now this minute.

Q. You know how many cubic feet you have put out since consolidation in any one day?

A. About twenty-two million, sir, I think as near as I can recollect.

Q. Have you any knowledge of the amount of gas required to light the city of New York, in these present evenings, nights, about?

A. I know—I don't know of other companies——

9393 Q. My question is what amount of gas it requires to light this city?

A. At this time?

Q. Yes; this time of night?

A. I suppose about twenty-six or twenty-seven million feet; somewhere along there; that I can't speak positively.

Q. Have you any plants belonging to your company that are not in use?

A. Yes, we have.

Q. And you know about how much?

A. We have the real estate, that is land enough to make fifty million feet a day.

Q. Now, you speak of having land enough; is that land not at present occupied by any tanks or mains or any thing?

A. We can increase our manufacturing with the land we have from twenty-eight million to fifty million, about I think; I have no doubt of it.

Q. Now, you say you built or planned the plants of the Manhattan; are you competent to judge of what it cost to put in a plant at present?

A. I suppose it would——

Q. My question is whether or not you are a competent engineer to testify what plants cost?

A. I suppose a million dollars for a million feet.

Q. That embraces buying the land, and mains and all?

A. Every thing, I believe.

Q. Now, can you estimate or have you estimated what it would cost your company, having the real estate on hand to produce the additional plant necessary, to produce that fifty million feet?

A. That would require a good deal of calculation, but I know and am confident this we can do.

Q. My question is, have you compared the cost at any time since you were president of this company what it would cost you, owning real estate that you have now, to make the addition necessary to make a plant capable of producing in this twenty-four hours fifty million feet?

A. I have not calculated up to fifty million feet.

9394 Q. How far have you calculated?

A. With the expenditure now of $1,000,000, we can make an additional quantity of five million cubic feet a day. We can now furnish five million feet more in addition to the twenty-eight million, with an expenditure of $1,000,000.

Q. Now, you testified before that it would require about a million dollar plant to produce one million cubic feet of gas; now you say you can produce five million with an additional expenditure of $1,000,000; the reason of that is because you have the real estate and other things on hand?

A. Because we have the land, the buildings and the apparatus, and with the expenditure of $1,000,000 we can furnish an additional quantity of five million feet in twenty-four hours.

Q. You say you have made that calculation—that estimate?

A. Yes, sir.

Q. Have you not been president of this company since its formation, this Consolidated Company in question?

A. I have.

Q. Do you have any knowledge of what it is assessed for for taxes; have you any knowledge of that?

A. We are taxed by the State for State purposes.

Q. The answer to my question is—have you any knowledge of what your company is assessed for for taxes; have you a knowledge of it, that's all?

A. No, sir; I do not; I know this, what our personal tax is.

Q. That is assessed in the city?

A. That is assessed in the city.

Q. What is your personal tax?

A. We are assessed in the city on personal $12,700,000, I think; this includes our franchises.

Q. What is your personal property?

A. Our franchises, coal, meters and such matters; the
9395 board of assessors did assess us $15,000,000 personal property, and after a good deal of discussion, a long discussion, they reduced it to $10,000,000; now, we——

Q. Reduced what, the personal?

A. The personal from $15,000,000 to $10,000,000.

Q. I thought you said personal $12,700,000?

A. Twelve million five hundred thousand dollars, I think, is the exact amount; they assessed us $15,000,000 on our personal tax, but they reduced that to $10,000,000, and we pay on that; and then I believe we have patent rights worth $2,000,000 or $2,500,000, and that would make it amount to $12,700,000.

Q. So you think your personal tax is $12,700,000?

A. Yes, sir.

Q. And of that personal how much is coal, horses, wagons and things of that kind; what does that amount to, you know?

A. No, sir.

Q. That embraces then this coal and things of that kind, together with your franchises?

A. Yes, sir.

Q. Embraces all the liquid assets according to market value?

A. Yes, sir; I suppose so.

(By Senator ROBINSON:)

Q. General, I don't suppose that includes the real estate and mains?

A. No, sir.

Q. I think I understood you to say that you planned the plant for the Manhattan Company?

A. Yes, sir, I did.

Q. And superintended the construction of it yourself?

A. I did; they were built under my personal direction.

Q. So you are a practical gas engineer?

A. I am.

(By the CHAIRMAN:)

Q. General, when you say it requires $1,000,000 of capital
9396 to produce a million cubic feet of gas per day, does it make any difference as to the quantity, that is to say, whether you

have a plant that shall produce one million, or five million, or fifteen million, or twenty million, the same would hold good all the way?

A. I suppose it might originally; that would depend perhaps somewhat on circumstances; but that is so. Now, when I say—that I may be understood exactly—the reason why I say that with an expenditure of $1,000,000 we could increase five millions, is because we have in some of our works certain apparatus equivalent to twice their present requirements, and naturally we can now add five million feet of gas a day to our production for $1,000,000; yet to add another five million it would cost, say $1,500,000.

Q. For the second?

A. Yes, sir; then I think we could go on and produce seven million feet for $3,500,000.

Q. The first five million feet $1,000,000?

A. Yes; the second for $1,500,000, and the next seven million feet for $3,500,000.

Q. And then you might go on——?

A. I have not calculated beyond that, sir; you see we have—I have gone over the whole of it; I have reasoned it out all over in my own mind what we can do. We are now sending out twenty-two million feet a day; it depends somewhat on the weather; we will probably send out twenty-four million feet a day during the holidays; but you can't tell; it depends on the weather; if it is foggy and cloudy weather there will be a great deal of gas used in the day time; we can't tell one day what will be required to furnish the next; it is so large a business, it would vary.

Q. Taking the ratio between the capital required and the
9397 per diem production, it will vary somewhat according to the quantity of gas produced by a given plant?

A. Yes, the more gas you make the cheaper you can probably make it a thousand feet.

Q. That is what I want to get at, whether or not that is so?

A. Yes, sir; you can do a large business cheaper than a small one.

(By Mr. TREMAIN:)

Q. Did I understand you, General, that the $12,000,000 of assets, the value of personality that you alluded to was the entire personality of the company upon which you paid taxes exclusive of real estate, or was that the amount from which the real estate was deducted?

A. It had nothing to do with the real estate.

Q. Nothing to do with the real estate?

A. No; I want to be understood, as I stated before, the city consented to place our personal taxes, that is our franchises and meters at $10,000,000, and the State taxes *us* $600,000 a year for State purposes; so I suppose that may be considered as the fair value of our franchise—that is the way I got at it.

Q. And the entire personality?

A. Yes, sir, the franchise, I suppose.

Q. You speak of patent rights. What patents are in use at the Manhattan works?

A. We have patents for charging and drawing retorts and storing away coal, etc.

Q. How many patents have you for charging?

A. Oh, I don't know; we have Ross's patent for charging, drawing, etc.

Q. What else?

A. That's all. Yes, we have—I don't know that you would call it a patent right—there are ways for storing coal.

Q. What others for charging?

A. We have Ross's patent.

9398 Q. No others?

A. The same as used in Cincinnati.

Q. What patents, if any, used in connection with filling the holders or tanks?

A. None that I know of for filling the tanks. I don't know what you mean.

Q. Is there not a patent used in conveying the gas from the tanks?

A. I don't know of any.

Q. For charging the retorts, putting the coal in and taking it out again?

A. Yes, sir.

Q. Is there any patent used from that time until the time the gas reaches the mains?

A. No.

Q. None?

A. No, sir.

Q. Has there never been?

A. You mean after the gas leaves the retorts?

Q. Yes, sir.

A. I know of no patent; the patent is in storing coal and manufacturing the gas; after the gas is made it requires no patent; it takes care of itself.

Q. Is there no patent used in adjusting the pressure?

A. I don't know of any patent for that.

Q. No patent used in recording the pressure?

A. I don't know if there are any patents; there are instruments for that purpose—an apparatus for that purpose; there may be patents; there are some patents, but as we buy of the manufacturers we have nothing to do with those particular patents that I know of.

Q. Is there a stage in the process after the gas is produced before it is consumed when any pumps are used?

A. After the gas is produced? Oh, we use what we term exhausters or air pumps—gas pumps.

Q. Are they patented?

A. Yes, sir; all those things are patented but the company does not own those patents.

9399 Q. You acquire the right to use them when you buy the machines?

A. Yes, sir.

Q. How many are used by the Manhattan?

A. Oh, I don't know; we have patent exhausters that we bought

in London forty years ago; and there is the McKenzie patent here, and oh, two or three others; I don't know.

Q. Can you mention the names?

A. No, I don't know; Root, I think, is the name of one, McKenzie was one, and Jones, and I think there was another one, Beals; we use two kinds of exhausters in the Manhattan works; they use in all the works different patents; I can't recollect the names of the owners and patentees.

Q. What did you say the names of the patent exhausters are?

A. I think Root is the last patentee.

Q. Did you ever hear of McIlhinney?

A. I didn't know he had invented any.

Q. The purpose is to relieve the pressure from the retorts and to force it against the weight of the gas holders?

A. Yes, sir.

Q. And by what general process is that done?

A. The exhauster draws the gas from the retorts and forces it through all the intervening apparatus into the gas holders; to explain it further I would have to go into the chemistry of the thing.

Q. A strong pressure of air is created in order to aid in the propulsion of the gas?

A. Strong pressure of air—air has nothing to do with it; the air has nothing whatever to do with it.

Q. You use an air pump?

A. I say it is like an air pump—it is a gas pump; it pumps the gas from the retorts through the intervening apparatus to the gas holder so as to cause the holder to rise; the weight of the holder gives all the necessary pressure on the streets.

9400 Q. If the weight of the holder then can rise that increases the pressure in the mains?

A. What mains?

Q. To which the gas is delivered?

A. Yes, sir; when we speak of mains we speak of large pipes in the streets.

Q. The pressure on the street mains is regulated by the pressure on the tanks?

A. Yes, sir; when you say tanks you mean the holders that hold the gas—the gas holders; if the pressure of the gas holders is greater than that required on the street mains, that is regulated by valves or governors; on regulating that pressure the gas holder would vary in pressure according to the height.

Q. If the weight was stationary, so it could not move up and down?

A. There would be no pressure at all; in that case, if you filled it you could not empty it again.

Q. It would have to be pumped out?

A. Pumped out? That is an absurdity.

Q. You mean that it is not practicable?

A. Impracticable; if you should attempt to pump the gas out of the gas holder you would crush your gas meters in, and in very short order.

(By the CHAIRMAN:)

Q. General, when these companies were brought together, was it found that there were many of the streets in which there were an unnecessary quantity of mains?

A. Yes, sir; that will always be the case where you have opposition companies; the more companies you have the more capital you waste in carrying on the business.

Q. Can you tell us how large a quantity of those unnecessary mains there was at the time of consolidation?

A. I am not sufficiently familiar with the subject to answer the question; I knew there were more large mains than business would warrant.

9401 Q. Could you give us some kind of an estimate that would be approximate?

A. I cannot, sir.

Q. Some complaint has been made that while the price of gas has been reduced the bills for gas have increased; now, without inquiring whether that is particularly so or not, we want to ask you this: What are the conditions which either increase or diminish the quantity of gas registered at a given burner for a given number of hours, if you please?

A. In nine cases out of ten the carelessness of the consumer.

Q. The carelessness of the consumer in what respect?

A. Not paying attention to his light; putting it out when he does not want it; there is an enormous quantity of gas that is wasted unnecessarily through the carelessness of the party burning it; that has always been so, and I think will always be so from now until the day of judgment.

Q. Now, assuming that that carelessness is a fixed quantity, now, what other conditions would either increase or diminish the quantity of gas registered at a given burner?

A. I don't know of any condition that would do it in a properly conducted company as ours is; the pressure by the gas companies is no more or less than just to furnish the quantity of gas required.

Q. I am asking you now what conditions might do it—not in your case, nor in any other particular case—but what conditions might increase or diminish the quantity of gas registered at a given burner, other things remaining equal?

A. I know of none whatever.

Q. Could you not increase the pressure in such a way as to cause the escape of more gas—I don't refer now to any thing you have done?

A. I understand that; no gas company will work under a greater pressure than it is compelled to.

9402 Q. How is your propulsion usually determined?

A. By the requirements; for instance, if we should get a report made of deficiency of light the deficiency of light would arise from the fact of insufficiency of gas; that insufficiency of gas would arise from the fact that it was not sent into the meters with sufficient force to supply the quantity required; we would then increase our pressure; our pressure is increased or diminished every few months.

Q. Would it be a physical possibility to increase the pressure so as to cause the escape of an unnatural amount of gas at the burner?

A. Not at the burner; it would in the street mains; it might in the street lamps; but in the house, if parties pay any attention whatever to their light they may regulate it to suit themselves; but the gas is improperly burned, it is improvidently burned, wastefully burned.

Q. That I understand; I have no doubt it is so. Now, supposing the light is turned on with full force, is it a physical possibility for the company to cause such a pressure to be brought upon the gas as to cause the escape of more gas than is really consumed?

A. Not more than is consumed, but more than is properly consumed. There are some burners so constructed, called fish-tail burners, that will blow when you turn them up, they will go up to a point instead of spreading out the gas; it will whistle, and then the only thing you can do is to turn your gas down, but if you shall let it blow the gas company can't help that.

Q. Would more escape than could be turned into a flame?

A. I don't see how it could escape without being consumed.

(By Senator ROBINSON:)

9403 Q. General, you have had an experience with meters; is it just as apt to register so as not to register all that passes through?

A. Yes, sir; a majority of meters that do not register correctly register against the company; they pass more gas than they register.

(By Mr. TREMAIN:)

Q. Do you make that statement from the records of the company or is it a matter of knowledge?

A. What?

Q. That statement you have just made?

A. I speak from positive knowledge; it is a matter of positive knowledge.

Q. Is that particular statement you make a statement that is made from the records of the company?

A. Yes, sir.

Q. Those records are records of meters that the company has tested and examined and no others?

A. Yes, sir.

Q. What books will show such records?

A. You can find them by going down to Irving place; there is not a meter that comes into that building and goes out again without being proved, whether it is a new meter from the factory or from a customer that has been sent back to be reconstructed; the record is kept and you are at liberty to look at it; I think we prove certainly ten thousand a year.

(By the CHAIRMAN:)

Q. General, how does the illuminating power of gas affect the quantity consumed at a given burner, other things being equal?

A. The illuminating power and the quantity have no reference to each other, if I understand you right.

Q. One witness thought that when the illuminating power of the gas was increased at a given burner that the quantity consumed, other things being equal, was diminished?

A. The quantity consumed might depend on the specific gravity of the gas.

9404 Q. Does not the illuminating power coincide with a certain relative specific gravity of the gas?

A. Not in all gas.

Q. The greater the illuminating power the less the specific gravity ordinarily?

A. It would not follow.

Q. Would the reverse be true?

A. I would have to get at the composition of the gas and go into the details of the manufacture of gas to answer that.

(By Mr. TREMAIN:)

Q. General Roome, inasmuch as Senator Robinson has asked you one question about meters I would like to ask you if it is not the fact that the longer a meter is in use the more apt it is to get out of order and register against the company?

A. The longer it is in use?

Q. The older it gets?

A. To register against the company; yes, sir.

Q. That is generally true, is it not?

A. Oh, yes, that has been my experience, gentlemen.

Q. A great many things might happen; I don't care to go into the subject of meters?

A. I don't care to volunteer any thing; I don't wish to be understood as doing so; but I believe there is no article of consumption sold in this community than the gas sold to the public that will——

Q. I did not ask any information on that subject; this committee has not inquired into that; it is the policy of the company to change the meters about how often, within five years?

A. Oh, yes, all changed.

Q. As a general thing within three years?

A. Yes, sir.

WILLIAM COMBE, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

9405 Examined by Mr. TREMAIN:

Q. What is your occupation?

A. Superintendent of the Fourteenth street station of the Consolidated Gas Company.

Q. That was formerly the East river Manhattan station?

A. Yes, sir.

Q. And you were also there at that time?

A. Yes, sir.

Q. Your profession is that of an engineer?

A. Of a superintendent; I don't claim to be an engineer.
Q. How long have you been in these works?
A. About thirty-one years.
Q. You are familiar with all the details of the work there, are you not?
A. Yes, sir.
Q. Well, what is the process by which the gas is put into the holder?
A. It is made in a retort and goes into the holder by its own pressure and the pumps.
Q. What pumps?
A. Root's and Jones' exhausters.
Q. How long have they been in use?
A. The Jones pump has been in use nearly thirty years.
Q. Thirty years?
A. Yes, sir; and the Root pump about two years.
Q. Are those the only ones that have ever been used?
A. Yes, sir, at that station, at their works.
Q. What special purpose do they preserve?
A. Take the pressure off the gas in the retort.
Q. What else do they do?
A. Put it into the gas holder.
Q. Suppose the pressure of the gas holder is uniform and is not changed, what is the effect, if any, that the pumps have on the gas?
A. No effect at all, but to put it into the gas holder.
Q. Well, if there is an outlet it would put the gas into the street mains, would it not?
9406 A. It has nothing to do with the street mains; that is regulated by another valve that is in our valve house.
Q. Any pump used there?
A. None at all.
Q. What regulates the valve?
A. The gas is regulated going out by the pressure of the gas holder.
Q. My question was, suppose the pressure was not regulated at all, but remained uniform, would not those pumps make the pressure more or less?
A. The pumps have no connection with that pipe at all; they have another in connection with the street.
Q. For forcing the gas into the holder?
A. Yes, sir.
Q. If the valve was open and the pressure uniform, that would force the gas into the mains?
A. The pressure of the gas holders does force the gas into the street mains; we have to change that every five months.
Q. My question was, assuming that, without opening and regulating, it remains uniform at the valve, and that the pressure on the holder was uniform, would it not be possible to force the gas through the holder into the main by that pump?
A. No, sir.
Q. Why not?

A. It pumps directly into the holder; it forces the gas into the holder.

Q. If the valve was open and the force continued it would have to force it out, would it not?

A. No, sir; I can very well explain what I mean; it pumps into the gas holder.

Q. If the top or bottom of the valve was open it would pump it through and out?

A. It would pump it so full it would blow out at the bottom from a separate valve there.

Q. Suppose they are open?

A. When they are open; they are only opened when they are required to be.

9407 Q. Is it not possible for you to answer my question, then? Suppose that the valves are open so that the gas may escape from the holder into the street arteries, and suppose that the pressure at the holder remains constant and uniform, and is not changed at all, and the gas pumped into such a holder thus opened, would not the gas escape by the arteries into the street, under those conditions?

A. Yes, sir.

Q. It would?

A. Yes, sir.

Q. Now, I ask you this question: Is it not possible so to force the gas by the pumps that you use, in order to pump it into the holder that with a uniform pressure at the holder, and the valve open, the gas can be pumped into the artery; that is possible, of course, is it not?

A. It is possible, yes; but at night, when we are using the full quantity of gas, all we make is pumped into the street and the surplus required comes from the gas holder.

Q. Comes from the gas holder?

A. Yes, sir.

(By Senator MURPHY:)

Q. Then your theory of it is that you supply the meters, and if the supply of gas in the mains becomes exhausted, then you take it from the holder again to supply what is needed, is that it? Is the valve continually open to supply this?

A. Yes, sir.

Q. The gas is continually open from the holder to supply the mains?

A. Our holder is the surplus for the night, at night time; when there is full consumption going on, all that we make goes out into the street, and if the surplus required is more than we make it comes from the gas holders, which are stored in the day time.

(By Mr. TREMAIN:)

Q. Assuming the pressure of the holder to be constant and uniform, and the valve open, and constantly open, at what point,
9408 if any, is there a danger of explosion under those conditions?

A. None at all, that I am aware of.

Q. At this station you make coal gas?
A. Yes, sir.

JOHN H. SHERWOOD, recalled, testifies as follows:

Examined by Mr. TREMAIN:

Q. Mr. Sherwood, did you examine the schedule of lands, of lots, that were set forth in the schedules in evidence of the constituent companies entered into the Consolidated?
A. I have.
Q. What is your experience and sources of knowledge and information touching the values of lots in the city of New York?
A. I have been a dealer in real estate and an appraiser for large institutions, also for estates and individuals for the last thirty years.
Q. Name some of the institutions that you have acted in that capacity for at times?
A. Mutual Life, Van Buren estate, Columbia College, Board of Underwriters, and others where I had to let for friends; constantly giving opinions to parties upon real estate.
Q. Is it or not an ordinary thing in forming an opinion touching the value of real estate in the city of New York to estimate separately the value of land or lots as distinct from the structures upon them; is it or not a familiar thing to estimate the value of the land or lots?
A. In valuing for loans I also get at the value of the land and the buildings.

(By the CHAIRMAN:)

Q. Separately?
A. Separately.

(By Mr. TREMAIN:)

Q. And if you have familiarized yourself with the lots upon which the works and structures of the plant of the various constituent companies are located sufficiently to form an opinion, the committee would like to know whether the values, the total values, opposite the terms "real estate," "bulk heads," "piers," etc., set forth in the presumed schedules that are in evidence are or are not in excess of the fair market value of those lots; please state to the committee whether you can express an opinion on that subject?

9409

A. In this case I am called upon to give an opinion upon the value of lots that are stripped of every thing above the paving and the sidewalks.
Q. Take all and value it as improvements?
The CHAIRMAN: You give the value of it as land located where it is?
A. Yes, and occupied for manufacturing gas.
Q. Have you an opinion on that subject?
A. I have, yes, sir.
Q. Please state to the committee whether in your opinion the values upon the schedules are or are not fairly stated there?
A. I think they are excessive and fictitious.

Q. Well, please state more of your information and to what extent they are so excessive?

A. They are estimated beyond what land property could be sold for at this time. It is notorious that wherever gas works are located that it cheapens and is a blight upon the property; the gas property itself necessarily remains cheap property and it cheapens the surrounding property, and in no section where gas plants, to my knowledge, are located do we find high priced property.

Q. I don't think that opinion responds to more than half my question. To what extent in your opinion are these values excessive?

A. I shall say that they were from twenty to thirty-three and a half per cent., and in some few cases more than that beyond their present value.

9410 Q. By present value do you refer to the value in 1885; if you do I understand this question to relate to the period of 1884?

A. By present value I wish to be understood that it was what I could say their present value would be, stripped of every personality that they have, estimated as personal property, just the bare lots, as I am requested to give an estimate.

Q. Would it have been less or more in the fall of 1884 than now?

A. Not that property; property generally I could say in the City of New York has appreciated in the last ten or twelve months; property is considered on the up-grade now in the city.

Q. You base your opinion on the present value?

A. I base my opinion from the values that were given at the time of the consolidation, the figures that I had here.

(By the CHAIRMAN:)

Q. Are your estimates based upon the value of to-day or the fall of 1884?

A. The values that I take in the schedules submitted to me.

Q. At what time of valuation, now or then?

A. When these statistics were made, the data there.

(By Mr. TREMAIN:)

Q. The sections of the city in which these various works appear by the schedules to be located are very well known, are they not?

A. Yes, sir.

Q. Persons at all familiar with real estate are likely to be well informed as to their fair values, are they not, do you think?

A. Yes, sir; I think that is a matter that could easily be got at.

Q. Have you been engaged in buying and selling vacant lots in the city?

A. Yes, sir, and owned a great many of them, almost daily, I think, from its very progress.

Q. If it were known that vacant lots were to be used for gas would not that put up the price for those lots, would they not have

9411 to pay more for that purpose than any other?

A. No, sir; if fifty companies, gas companies, were to start business in the city of New York to-morrow—perhaps that would be an excessive estimate—I say ten companies, they would

have no difficulty in finding cheaper property to locate their plant upon; the supply of that is greater than that of any other kind of property.

Q. I understand you to say it cheapens all property around it?

A. Yes, it does; I believe no one will dispute that.

Q. Would it not put up the price of lots for that purpose?

A. I can answer by saying, if the gas companies would pull up stakes and go somewhere else their own property would sell for more and the surrounding property would be more valuable.

(By Senator MURPHY:)

Q. Then you mean to say if the gas companies removed their buildings from the present location that real estate would be of more value than it is now?

A. It would sell for a higher price than it would sell for now.

(By Mr. TREMAIN:)

Q. Would those particular lots sell for more?

A. Well, I don't know how to answer that; perhaps they would sell for more if the gas works were off from it. I will say this much, that if there was a restriction that there should be no gas manufactured on that property it would sell for more than with that restriction taken off.

(By Senator MURPHY:)

Q. What is the value of these properties, how do they compare with the values in the tax office?

A. I have not made that comparison, Senator.

(By Mr. TREMAIN:)

Q. Mr. Sherwood, do you know any thing about what is a proper capital, a fair capital to produce a gas plant of a given
9412 capacity, have you ever had any practical experience or any kind upon that subject in the usual course of business; if you have, the committee would like to have it?

A. I have no practical experience except from paying bills, gas bills, but from information I have obtained this last year, and what I consider very reliable information, in regard to the manufacturing and selling of gas.

Q. Well, if you can give the committee any light on that subject, I have no doubt they would be glad of it?

A. I am assured by reliable gas manufacturers who make it their business to set up works, that if they can have the right to come into the city and set up works and sell gas here, that they can supply it, to begin with, for $1.25, and will do so; and I have not the least doubt that any required capital for that purpose can be obtained.

(By Senator MURPHY:)

Q. Can you give us the names of those gentlemen?

A. I could not without giving you the names of parties who are willing to come here and start gas works; they are personal friends of mine, some of them, and perhaps some of them——

Q. My reason for asking the question is simply this—and all your evidence goes on the record—you stated what you know of several parties who are willing to come into New York, if they have the right of way, to manufacture gas for a certain price?

A. I will give you better reasons, Senator; some of them are interested in the present gas companies.

Q. Now, Mr. Sherwood, there is another clause in your answer that perhaps ought to be explained; what do you mean when you say if they had the right of franchise?

A. I mean to say that no man to-day that does not hold a charter, unless gas companies, can lay an inch of pipe in the city of
9413 New York without getting the consent of two-thirds of the population; could not do it if he furnished gas for ten cents a thousand feet.

Q. You think that that would retard the gentlemen to whom you referred in your evidence would establish gas companies?

A. I have no more doubt of it than I have that you will eat your dinner to-day.

Q. Do you refer to the law of 1883, known as the Thirty-fifth Act?

A. Yes, sir; I think that is the act that shuts out any other companies except the present ones from making or selling gas, and I characterize that as the most infamous piece of legislation that was ever enacted in the State of New York.

Q. Suppose there should be four or five more companies or twenty?

A. If I ever ask you to pass a charter for a gas company I will be willing to have a restricting clause put in prohibiting the company from charging more than $1.25 a thousand feet for gas, and also prohibiting among the shareholders a distribution of more than eight per cent. a year in dividends, which is enough for any reasonable man.

(By the CHAIRMAN:)

Q. Eight per cent. on what?

A. On the money actually put in.

(By Senator ROBINSON:)

Q. Are not the streets nearly full of pipes now?

A. No, sir; there is always room for more in the city of New York; there is room enough to put down a great deal more plant than we have got here; they may not be laid with precise regularity; pipes are put down in the streets very much like a string of country sausages, you know.

(By Senator MURPHY:)

Q. Have you ever had any conversation with any of the gas manufacturers in relation to the price of gas?

9414 A. Yes, sir; I met a large manufacturer, one of the best informed manufacturers in this city, on last Saturday evening at the club, and spent most of the evening with him.

Q. That is what I am getting at. Have you and any other members of the Gas Consumers' Association, met with any like number

of gas manufacturers in any hotel or room in this county, in this city, for the purpose of talking over the price of gas?

A. Yes, sir.

Q. I don't want to ask the names of the gentlemen who were present—will you give the committee the conversation, the substance of it?

A. Now, must I talk right out in meeting; the meeting was in a measure a private one; it is a question whether it would be proper for me to do so; so far as my part of the conversation is concerned, I would be glad for the committee to know it.

Q. If the subject was a private conversation, the committee has no power to exact it, but if it is any thing that ought to be on the record of this investigation, I would like to hear it.

Mr. TREMAIN: I don't think it ought to go on the record until the committee has heard it.

The CHAIRMAN: I concur in that. The committee has no interest except as the temporary representatives of the public in this matter; we have no friends, no enemies.

Senator MURPHY: I will not push the question for the present.

The WITNESS: I will say however, that the manufacturers and consumers were not able to agree on the subject of dividends to be paid by the gas companies. The consumers thought that the shareholders were unreasonable in wanting so large dividends, and the shareholders who had been educated up to receiving large
9415 dividends, thought that the consumers were unreasonable in wanting the dividends reduced so low as seven or eight per cent.

The CHAIRMAN: It is always unreasonable to expect anything less than what you can get.

A. Certainly, sir; I will say right here, if I can succeed in having gas sold in the city of New York by the present gas companies at what it ought to be sold for, for what they are selling it in some other cities for, I will step right out of the way and let the present gas companies occupy the ground as long as I live. I don't want to make gas except in self defense.

(By the CHAIRMAN:)

Q. Now, Mr. Sherwood, that the subject has been broached, if you have no objection, I would like to ask this question, whether, as a large property owner and a man familiar with the values of investments, is there in your judgment any doubt that abundant capital to supply New York city with gas can be immediately secured, or would be proffered if a dividend upon it should be limited to eight per cent. on the actual investment, and the price of gas regulated by law or the public authorities?

A. And a charter back of that that was durable, will you say?

Q. I assumed that in my question?

A. No, sir; not at all; there are millions here that are put into investments that pay from four to eight per cent.; millions of dollars.

Q. I was going to ask you about that; would large companies

making gas be secure in a dividend in gas of legal interest, or even four per cent.?

A. It is one of the grossest wrongs, Senator, that has even been put upon the people of the city of New York, the enormous
9416 amounts of money that have been wrung out of the people by the present gas monopoly.

Q. Have you any reason to doubt that if a gas company were formed with a nominal capital exactly equal to its actual capital doing a fair business with the people, have you any doubt whatever but what a dividend of five per cent. would be a reasonably remunerative profit upon the investment?

A. If investors knew it was permanent, it would not.

Q. You refer, in a large measure, to the fictitious capital and the manner in which the business is conducted?

A. Mr. Senator, the public in the city of New York know but very little about the works of these companies—these gas companies; it has been manipulated and held by a few favored old substantial people of this city; if the public knew of the profits that have been made out of them, I don't think these persons would ever have been suffered to accumulate profits that way; there is a measure of bad the public know very little about.

(By Senator MURPHY:)

Q. What system would you recommend?

A. I would recommend you to open the streets of the city of New York to any party or to any person who would, under proper legal restrictions, supply gas to the city of New York at any time for the purpose of making better gas or selling it cheaper than the persons who keep up the gas now; I would recommend that.

Q. Would that be done by the common council?

A. By the common council or by the legislature; let us have eight per cent. dividend, and let the people have the gas at cost after that.

(By Mr. TREMAIN:)

Q. Would publicity of accounts have any thing to do with it?

A. I would have the whole management as open as the noonday.

9417 (By Senator ROBINSON:)

Q. Mr. Sherwood, are there any other large corporations based on that principle, the dividend being limited to eight per cent.?

A. Well, yes; I think our savings banks.

Q. The Mutual Insurance Company limit in that way?

A. That is mutual; we don't take a penny for ourselves; let the gas companies adopt the system of the Mutual Insurance Company, nobody will ever make another complaint.

(By the CHAIRMAN:)

Q. Do you not think that corporations that derive their privileges from the public should be under the restrictions and under the eye of the public?

A. I believe any institution or any body of men who are receiving

privileges that are likely to be avaricious and overstepping the bounds of reason ought at all times to be restricted by legal enactments; now, when you come to take an article of gas and contrast it with a bank or any thing of that kind it is an entirely different thing; you can buy your gas nowhere else; you can buy your Croton water nowhere else; but you can deposit in any American bank and go to any store.

Q. You have had some seven or eight different companies that were opposed to each other, were they not?

A. It was not a monopoly at all until they made a combination; then it became a monopoly, I never opened my mouth, Mr. Senator, until that law was passed.

Q. During the time you had seven or eight different companies was not gas as high as it is now?

A. Yes, sir; sometimes as high and sometimes higher.

Q. So that competition didn't cheapen the price of gas?

A. It did at one time, and then they bought up the competitors, and now there is no competition; within a few years in-
9418 ventors and discoverers have enabled them to make gas with double the illuminating power at about less than half the cost; gas is made to-day for sixty and seventy cents, but they don't sell it for that; it is made in Jersey City and sold for $1.25; the largest gas companies in Chicago brought the price down to $1 and they never want to see gas higher than that in that city.

(By the CHAIRMAN:)

Q. Is it not true that competition alone is not enough to remove the evil complained of; you have got to have some regulation as to capital and some other matters?

A. Yes, sir; these same companies were competitors some few years ago at seventy-five cents, and by a pooling arrangement they brought it up to $2.25; they were no longer competitors then; you take cities in Germany, you take the place where Krupp makes his guns, those people are making gas there to-day at a cost of sixteen cents; of course the conditions in Germany may be very different from what they are here; labor is cheaper, and we pay better wages.

W. W. SHARPE is recalled, and testifies as follows:

Examined by Mr. TREMAIN:

Q. Referring to your bill-book at pages 386 and 387, a copy of which is before you, and to which the witness who has made that copy is to be sworn, did you or your firm pay or incur the several amounts to the several papers therein named and for which you rendered a bill to the Consolidated Gas-light Company; did you ever pay or incur those amounts, less the commissions?

A. I don't know; I don't know that I rendered a bill to the Consolidated Company; sometimes we do advertising for other
9419 agents and we divide the commissions with them and have nothing to do with making the contract with the advertiser.

Q. Assuming that may be so, is it not, however, the fact that the

entries in your books that are made in the usual and ordinary course of business are true entries and represent actual transactions?

A. I think so.

Q. Your books do not indicate that a payment was not made or an obligation not incurred when they state the contrary, do they?

A. No, I think not.

Q. You think your books do give a true record of your business so far as they give any?

A. Yes, sir.

Q. Who is the man in your establishment who has personal knowledge of the transactions or of any part of it to which this bill of May 11, 1885, relates?

A. I can't say.

Q. What is your cashier's name? He is bookkeeper too?

A. Yes, sir.

Adjourned to 3.30 o'clock P. M.

HENRY C. THOMAS, a witness called by the counsel to the committee, being duly sworn, testifies as follows:

Examined by Mr. TREMAIN:

Q. You are cashier for W. W. Sharpe & Co., are you not?

A. I am, sir.

Q. You remember a transaction in April by which an advertisement was to be sent through your firm to various newspapers in the city of New York, which newspapers are named in a bill in your bill-book, pages 386 and 387, under date of May 11, 1885?

A. Yes, sir, I conducted the transaction.

Q. You conducted the transaction?

A. Yes, sir.

9420 Q. Were the amounts that are set opposite the names of those different newspapers paid in the usual course of business to those newspapers, less the commissions?

A. Yes, sir, in some cases in making estimates we have to be a little higher in price; I could not say those are the exact prices; there may have been a little variance, higher or lower.

Q. Would you know at the end of the month when bills come in?

A. Yes, sir.

Q. And so far as you know the bills in the usual and regular course of business have come in at the end of the month and been paid or allowed in this particular advertisement?

A. Yes, sir, I am quite sure, but I would not say positively.

Q. Give us the amount of any that came in?

A. Yes, sir, we have a statement made up once a month.

Q. When they come in you are under obligations to pay them?

A. Yes, sir.

Q. Was any advertisement charged for by those papers designated?

A. Yes, sir.

Q. You keep a record of them?

A. Yes, sir.

Q. Have you to check off the advertisements that appear?
A. Yes, sir.
Q. You receive the papers and check them off?
A. Yes, sir.
Q. And this bill was paid as rendered, was it not?
A. Yes, sir, paid as rendered.
Q. What was the name of the man who conducted the transaction with you?
A. Well, that is a thing I can't swear to exactly; the name was Bange or Banze or something of the kind.
Q. A commission was allowed him?
A. Yes, sir, a very small commission.
Q. A commission out of your commission?
A. Yes, sir, probably $10, or may be a little over that.

9421 Q. There seems to be a charge also for an advertisement in the *Commercial Advertiser,* May 17, 1885; you remember about that?
A. Yes, sir; that was brought in by the same party but at a different time. I never saw him before but have seen him again since on the street; that is the only way I have of finding him.
Q. Do you know his business?
A. He told me he was a reporter on some newspaper.

DECEMBER 28, 1885.

Meeting of the senate committee.
Present: Senators Gilbert and Murphy.
Witness, Dr. W. M. JACKSON:

By Mr. TREMAIN:

Q. Doctor, you are connected with the——
A. I am president of the Gas Consumers' Benefit Company of the United States.
Q. Have you had experience in matters pertaining to light, heat and power, in a scientific way?
A. Yes, sir, I believe I am considered an expert in that respect.
Q. Kindly tell the committee what your experience in matters of that nature has been?
A. Well, sir, there has been a great deal of complaint from consumers regarding artificial light and in my judgment the complaints are largely due to the ignorance of the consumers themselves about gas; a total misunderstanding of the gas system and of the nature of gas.
Q. Have you made a scientific study for some years of the nature of the product of gas for manufacturing purposes, its method of production, distribution and consumption?
A. Yes, sir.
Q. Please tell the committee in what way your experience on these subjects has been gained?

9422 A. Well, it has been gained principally by experimental work on my own part; my investigation in the production and maintenance, and operation of gas works in every state in the United States; building works myself for the manufacture and de-

livering of gas and going into the works and making gas myself and making scientific tests of — photometrically and otherwise.

Q. So that you have studied the matter in a scientific and tested in an entirely practical sense?

A. Yes.

Q. What cities does this cover?

A. Providence, Boston and New London Gas Works; I built the latter for water gas nearly twelve years ago.

Q. Is your profession that of gas engineer?

A. No, not particularly; I profess to be scientific in this special department.

Q. Did I understand you to say that you were president of the Gas Consumers' Benefit Company of the United States?

A. Yes, sir, I am.

Q. In case that statement might mislead, as there is a Gas Consumers' Association, what is the object of your company?

A. To acquire and offer to the public all things which may cheapen the cost of artificial and effective illumination.

Q. You stated a moment ago there were many complaints by consumers regarding artificial light, do you allude to your general experience in other States or only to New York city?

A. In all cities where I have been brought in contact with the gas question I found the complaint to be universal, not only in New York city but in other cities.

Q. Well doctor from what cause or causes in your experience did such complaints proceed?

A. The main feature as I understand it is excessive pressure at the point of ignition; improper burners; the distribution of gas of unscientific composition; of varied and too high candle power;
9423 ignorance of the public concerning gas meters and general apparatus involved; illogical press comments; things accepted by custom as facts which have no truthful origin. A total misunderstanding of the gas question. A fostering desire to find fault, with no fundamental information from which to draw reasonable and just conclusions. Effects of long accepted, fictitious notions, creating morbid public denunciation of everything connected with gas. Improper regard for the rights of the people by gas companies, their selfishness placed predominant in fact of the franchise, the gift of the people.

These causes, the heads of subjects may be divided and subdivided into particular considerations until they become excessively numerous. Brevity and clearness therefore, in the statement of causes, must be incompatible with the rough conception of all points involved. To understand the gas system embracing its relation to kindred branches of industry, from the moment the pick breaks ground for the erection of works through all its ramifications to a truthful understanding of all modern improvements in chemistry, philosophy, dynamics, mechanics and mercantile diplomacy one must have made the subject a thorough study, and cannot convey his information in connected order unless he resorts to systematic preparation. I know of no subject which combines more humbug in the same receptacle than illuminating gas. There are a thousand

and one processes for its manufacture, each the best. The apparatus for its consumption, burners, stoves and engines may be counted by thousands; to eliminate the true from the false requires a thorough knowledge of the subject; each misrepresented ap-
9424 pliance pushed into popular favor, soon clouds the confidence of consumers and renders so much more difficult the introduction of any thing meritorious—we have thus to deal with an apparently inextricable mass of incongruous matter.

Q. General Roome, who was called here, volunteered an opinion—I do not remember that he was expressly asked upon the subject in reference to the veritability of meters. Now if your experience is of a character that enables you as a scientific and practical man in expressing an opinion upon that subject, the committee would like to have your opinion as to whether gas meters measure and record gas correctly, and if not whether there — any that do?

A. I have had large experience with gas meters; I have had occasion to use all kinds that have been manufactured, both American and foreign; I have tested them in all conditions of temperatures and tested at random those in general use and I draw this conclusion: I know of no instrument in such universal use, which can favorably compare with a gas meter for faithful work—at the factory before it is permitted to leave, it is adjusted with the utmost care and operates as accurately at the temperature of adjustment as a chronometer. Of course it must vary in general use as temperature contracts or expands a cubic foot, but since it is usually located in a cool place, the cellar generally, we may infer that its action will be as fair for the consumer as the manufacturer of gas—take it the year around its record is correct; a gas meter can no more move its machinery without a flame of gas through its substitute cylinders and valves, than can a steam engine with no steam; the dial hands of a meter are connected to the actuating mechanism by positive
9425 gearing, and they cannot move unless the engine be put in motion; the motion cannot take place unless the gas passes in or out of the meter; the metrical devise may be injured in such manner that gas may pass through without actuating the engine, in which case the index is silent and the consumer receives his gas gratuitously; but cannot be so broken that no gas will pass, and the index continue to record; to be plain, the indices of meters mark consumption only when gas passes, and if a record be made upon the dial you may be sure gas has gone somewhere, either consumed by burning or lost by leakage in your pipes; I will not say that all meters in use record correctly, but will assert that I believe if all the meters in this city were tested, the result would show against the Gas Company an average loss, which of course gives the consumer the advantage; meters may be incorrect from improper adjustment after being repaired, or may be read wrong by the indexer, but I firmly believe the meter to be more than fair toward the public, taken as a whole.

By Senator GILBERT:

Q. Is there no allowance——

(Witness interrupting:) No, sir.

Q. You have named improper adjustment as a possible case of meters recording incorrectly, is it not true that the index of the meter may be made to run faster or slower as the gas passes out of the consumer's pipes, according as the radius that is attached to the diaphragm may be lengthened or shortened as the pendulum of a clock?

A. Yes, sir.

Q. So that by lengthening that radius, as the pendulum of a clock is lengthened, the meter may be made to run too slow?

A. Yes, sir.

9426 Q. And by shortening it as the pendulum of a clock is shortened, the meter may be made to run too fast?

A. Yes; that is so.

Q. And that effect may be produced, may it not, while the gas that is passing through the meter is consumed?

A. Yes, sir.

Q. And your evidence as just delivered, is based is it not, upon the theory that the radius is perfectly adjusted?

A. Yes.

Q. Is that practicable?

A. Yes; the meter is adjusted by means of a power which indicates the exact number of cubic inches, and the adjustment continues until the index of the meter and the delivered gas measured by the power correspond; this is exact at uniform temperatures.

Q. Is it not practicable without disturbing the seal to change that adjustment?

A. It would be a very difficult thing to do; you are obliged to take the whole top of the meter off to make the adjustment properly.

Q. Can that be done without disturbing the State seal upon the top of the cover?

A. It might be done; it would show upon inspection to have been done; you can cut a hole through the top of the meter, a small hole, and cut up a square, then reach down with a pair of forceps and change the adjustment, turn it over, solder and paint it, and no one would notice it upon superficial examination.

Q. When the meter is repaired, is it not necessary to get at the nut to make that adjustment?

A It ought to be always.

Q. And in so doing it can be made to run either fast or slow?

A. Yes.

Q. There is no doubt about that, is there?

A. No; that is what Dr. Chandler said in his testimony which is before you.

9427 Q. Will not that meter register so long as any kind of gas passes through it and works the dial hand?

A. Yes, sir.

Q. What do you mean when you state that gas is always measured which went in or went out?

A. The meter is constructed virtually upon the same principle as a low-pressure engine, and gas must pass through the mechanism to

actuate it; if there is a hole through the mechanism the gas can pass through without acting.

Q. Any kind of gas will operate through the mechanism, will it not?

A. Yes, sir.

Q. Whether it is illuminating or not?

A. Yes.

Q. Or water?

A. Yes.

Q. Or air?

A. Yes.

Q. Is it not then true that this mechanism will register as though gas was consumed when it passes through, if it does pass through?

A. Yes; it will register a cubic inch as correctly as a cubic foot of gas.

Q. Is there any way of telling by the meter what has passed through the meter, whether air, gas or water?

A. No, sir.

Q. You have stated that one cause of complaint by the consumers is excessive pressure at the point of ignition; will you please explain this?

A. Illuminating gas, whether distilled from coal or other gas-yielding hydro-carbon, or made by decomposing water by means of incandescent carbon and subsequently carburetting the compound, obeys a common law when brought in open contact with the atmosphere and ignited. This common law provides that combustion is the prime factor in the production of light, and to effect combustion the gas must be inflammable and explosive when mixed with its proper co-equivalent of oxygen (an ingredient of air); there-
9428 fore, all flames are but a series of minute explosions, so rapidly following each other as to present the spectacle of continuity. These explosions are created by the chemical affinity of oxygen and hydrogen, the former in the air, the latter in the gas; they await only the touch of fire to seize upon each other; the friction created by this rapid union maintains and continues the process, destroying the nature of component parts and sending them into the atmosphere as products of combustion. Meanwhile, the floating or hypothetical carbon is rendered incandescent by the intense heat and light necessarily resulting. Nothing material is lost in chemistry, simply changed to another form or state. Thus if we weigh a cubic foot of gas and burn the same, collecting the products of combustion, we shall find we have a new group of material to deal with, but the same old elements; corresponding in weight exactly with the original quantity of gas plus the weight of air it took to consume the cubic foot; if our combustion has been perfect, we should have light and heat in true proportions; but if imperfect we meet with a loss which, though not material, properly speaking, affects us as such, and so almost contradicts the theory of nothing lost; this union of oxygen with hydrogen involves the chemical change of other ingredients concerned, for instance, hypothetical carbon bisulphide of carbon; sulphuretted hydrogen; carbonic oxide, carbonic acid, component

parts of most all illuminating gases and nitrogen an ingredient of air; the hypothetical carbon is converted into carbonic acid; all compounds of oxygen with carbon in the gas such as carbonic oxide and carbonic acid are changed into carbonic acid and aqueous vapor while sulphur is united with oxygen to create a sulphurous
9429 acid; now if the combustion be partial only, the process is illegal, and its issue a reflection upon our intelligence.

By Senator MURPHY (interrupting):

Q. Please state what that means; you have just stated that it is a reflection upon our intelligence?

A. We have had gas long enough in use to have been enabled by this time to supply mechanical means for its proper combustion—it is our fault if we do not so consume it.

Q. Are there no patents in existence now for consuming gas as you have just mentioned?

A. Yes; hundreds of them.

Q. But they are not in use by any of the companies, are they?

A. No, sir; most of them are utterly impracticable.

(By Senator GILBERT:)

Q. That is to say, there has nothing been found to serve the purpose?

A. No; nothing but an imperfect kind. When a flame smokes, the carbon is not decomposed and lamp black is the result, this being a common fault with gases containing a large percentage of hypothetical carbon and indicating a high candle power. Such gases are generally improperly consumed by any common burner which a consumer may chance to purchase. They may, however, be perfectly handled, provided an expert selects the device for such manipulation; as experts are not always at hand, the results give rise to complaint. Gases smoke as a rule, because the burner exposes too much gas under too low a pressure for the grasping power of the atmosphere, the atmosphere laboring under more or less advantage, according to whether it is still or in motion. It seems to me that a gas of not more than twenty candle power is the only one which can be used with general satisfaction to producer and consumer.
9430 Pressure exerts a particularly active influence upon all gases, relative to combustion. It may be concluded that perfect combustion requires a certain quantity of gas, relative to a certain quantity of air, and the relative quantities depend upon the composition of the gas—therefore, a gas publicly distributed should be as nearly uniform in character as possible. Next we wish to consume this gas in such a manner that the products of combustion will be natural, thus obtaining the full photometrical value and preventing unnecessary pollution of the atmosphere of our apartments. It has been determined by repeated experiments that illuminating gas may be forced through a given size aperture with such velocity that its carbon fails to become incandescent or even luminous, thus we have the example presented, a twenty candle gas distributed and the possibility present of so consuming such a gas as to deprive it of its entire light.

By General TREMAIN:

Q. Is that practicable?

A. Yes; I can demonstrate it.

Q. In other words you can force it through burners which would give a full light, so that it would hardly give any light at all?

A. Yes, sir; it takes a high pressure to deprive it of its entire light.

Q. Can that effect be produced through any length of pipes, or what length?

A. It makes no difference whether the distance is ten feet or ten thousand.

By Senator GILBERT:

Q. Is that statement relatively true?

A. Yes; now just in as much as there may be a point of high pressure to burn gas at the place of ignition, which annihilates its
9431 luminosity, so there is a low pressure at which we may secure the full candle power.

Q. Now the problem is to have the pressure such that the gas, as it passes through, shall all be consumed and give an even continual light; is that it?

A. That is the point I am making; the light being lost proportionally as the pressure varies between the two standards. I think I am correct in the statement; all things considered that fully one-half of all the light indicated by photometrical test, all over the world, is lost by consuming the gas at improper pressure at the point of ignition and in leakages after the gas passes the service meter. We have by this means a much larger quantity of material being converted into gas than required for the amount of light we receive.

(By General TREMAIN:)

Q. When you refer to the service meter, you mean the meter in the house?

A. Yes.

Q. On what do you base that statement?

A. I base it upon the opinion of most all practical gas engineers that I have talked with on the subject; they put the loss of light as high as fifty per cent. with imperfect combustion; I add leakage of service pipes to it.

(By Senator GILBERT:)

Q. In other words, one-half of the gas is practically lost?

A. It is worse than lost; the atmosphere is polluted by the large amount of gas as well as there being a financial loss.

Q. Then there is a financial loss and harm to physical health generally?

A. Yes, it is a fact, and how far it may be concerned in producing epidemic diseases which are prevalent in gas consuming cities, no one can tell, but it is fair to presume that in a room where there are four or five burners there is an atmospheric impoverishment of fifty per cent. by imperfect combustion.

9432 Q. Then it is not only a financial loss but a sanitary one?
A. Yes.

(By General TREMAIN:)

Q. You have stated right here something about financial loss; is it not true that there is really no financial loss to the gas company the loss you have just stated, the consumer loses by the index at the meter?

A. There is no financial loss to the consumer except so far as the doctor's bill is concerned. The gas companies are paid for all the gas that passes through the meter while the consumer receives but one half of the light which is allowed him, besides a loss to his physical health.

Q. It is not true then that there is a larger quantity of material converted into gas than is requisite for the quantity of light we receive?

A. Yes, about double; they use about two tons of coal at the works when they should use one.

Q. That is if it is coal gas?

A. Yes, certainly.

Q. There is a loss by imperfect combustion?

A. Yes.

Q. Explain that loss, please?

A. We have by this means a much larger quantity of materials being converted into gas than required for the amount of light we receive. Now if so large an amount of light is lost by imperfect combustion we must consume as much more gas to secure the illumination to which we are entitled, burning so much more obliges us to rob the atmosphere of an equivalent proportion of oxygen; excessive quantity of products of imperfect combustion, coupled with deterioration of the air by taking from it its oxygen, renders the air which we breathe dangerously obnoxious; imperfect combustion is damaging alike to eyes, health and pocketbook; a violation of natural law, and wanton waste of gas-producing material, a losing game at both ends of the dilemma; careful experiment
9433 has proved that for a twenty candle gas the open burner should expose a flat flame as nearly circular in shape as possible, and the gas emerge at the top at about two-tenths of an inch water pressure (the power the gas exerts to hold a column of water two-tenths of an inch high). For a gas of thirty-candle power three-tenths of an inch may be required, and so the higher the candle power the greater must be the pressure to prevent smoke, and drive the gas through narrow orifices (which are required for high-candle power); fine orifices are undesirable, because liable to stricture; I can offer no argument against an eighteen or twenty-candle gas; experience teaches as it is best and most satisfactory all around, although the great bulk of distributed gas in New York is higher than my standard, and thus might be termed a much superior gas compared with that furnished other cities, still its distribution is attended by complaints of smoke from consumers, and rendered somewhat fractious on cold nights by condensation and other inconveniences.

Efforts have been made to burn super-heated gas, and extravagant claims have been laid to superiority. A series of experiments conducted by me several years ago demonstrated, to my mind, the fallacy of this system, since you cannot superheat without decomposing the gas and precipitating its illuminants, thus losing instead of gaining light, besides filling your conducting pipes with coke and choking the passage of the gas. I have spoken somewhat carefully of pressure, limiting my statement particularly to regulation at the point of ignition. Reasons present themselves to my mind for this exclusiveness.

9434 Q. What is the reason that you have limited your observation to the pressure at the point of ignition and what relation has that pressure to the pressure actually exerted at the holder or immediately preceding the distribution of gas?

A. Because I believe it to be semi-effective only to govern the pressure at remote points from the flame; the place to control pressure is at the point of ignition.

By Senator GILBERT:

Q. And the place where the pressure is created, is where?

A. At the holder, but the place to control pressure is at the point of ignition, and the device should be automatic, changing to suit the varying pressure caused by unequal calls upon the mains for more or less supply, as burners are lighted or extinguished.

By Mr. TREMAIN:

Q. Perhaps if there was an automatic device at the point of ignition, the consumer would not receive the benefit of that, because the gas at the point of ignition would have already passed through the meter?

A. That would not make any difference if the gas passed through the meter and the device was located at the point of ignition, providing the gas was under a certain pressure, say two-tenths of an inch and therefore instead of burning double the quantity of gas which was the case before, he would burn only the quantity which would pass under that pressure of two-tenths of an inch through the meter, and not register the gas which had not passed.

Q. Then your theory is that a machine of that sort is for preventing that gas from causing to the point of ignition at such a rapid rate as at present?

9435 A. No fixed openings as is the case with check burners, can never suffice to bring about proper combustion, they serve as additional stop cocks and are superfluous in view of the fact that one gas cock already exists by which you can check the flow of gas as effectively as with the additional one in the burner; the varying pressure of gas in the pipe is a necessity from the nature of the supply and demand, also a necessity from the fact that gas is specifically lighter than the atmosphere and increases its pressure by rising, diminishing by falling but independent of the initial pressure from the gas holder at the works.

Q. Something has been stated about regulating that pressure immediately after the gas passes out of the meter by some appliance?

A. Yes, gas governors; they are used for the purpose of producing automatic regulation of pressure.

Q. And do they not have that effect?

A. Not specially; there are many devices of this character, all operating upon the same principle, varying just enough in mechanical construction to entitle them to limited separate patents; some employ flexible diaphragms, others check valves, and many separate miniature gas holders floating in dead oil, mercury, glycerine and other fluid seals; they serve a fair purpose in the absence of a better thing; the prime objectionable features exist in common defects; the principle on which they operate is founded upon the power of the gas to flex the diaphragm or lift the holder against the atmospheric pressure, and thus draw into position a valve which partially shuts off the supply of gas; when the burners are not in use the gas forces the valve to its seat where it is liable to adhere, owing to a sticky deposit lodged on the face of the valve by the foul nature of the gas; this tendency varying in severity with the character of the gas employed; again these devices are all dangerous,

9436 since they are obliged to have an opening in their upper chambers above the diaphragm or holder, for the free ingress and egress of air, thus there is nothing between us, and a fatal leak of gas into our cellars save the diaphragm or the fluid seal; this might be obviated by connecting the upper chamber by a pipe leading out of doors; I have never seen it done, but offer the suggestion gratuitously; now, presuming we have our governor duly connected with an out-of-doors pipe, and located upon such a clean gas that the valve will not stick, and weighted to produce a pressure of say six-tenths of an inch; we cannot set it at a lower standard than this, because our pipes would rarely furnish us sufficient quantity of gas at a less pressure; now the unequal demand upon pipe branches will vary the pressure after the gas passes as will also its tendency to increased pressure upon rising, or diminished upon falling; therefore it does not regulate properly or effectively; again, with the growing demand for gas for heating, cooking and mechanical purposes, we require adequate supply and high pressure; if we cut down the pressure, by a governor, all over our pipes, we are deprived of the convenience of our gas stoves; there seems to be but one way out of the difficulty; automatically regulate the pressure at the point of ignition by some inexpensive device which has no movable parts in contact and will stand the test of time without fouling and becoming inoperative, then the pressure on street mains and pipes will make no difference to our attaining the full value of the gas for illuminating purposes and *we* shall be cocked and primed for the acceptance of proper devices for heating, cooking and other purposes. If the ideal device above pro-

9437 pounded should be forthcoming, we shall not only insure perfect light, better air and comfortable satisfaction, but in as much as the pressure at the point of ignition is not to vary, controlled by the automaton. A one foot burner will burn

one foot, and a five, five feet, so we shall have some means of knowing what we are consuming, whereas now a one foot may burn six feet and a five twenty, according to variation of pressure.

Q. Practically, the pressure is not regulated, is it?

A. It is not regulated. The gas companies furnish a pressure sufficient to supply *its* consumers with the amount of gas they require, beyond that there is no regulation from the holder.

Q. How is that pressure regulated by the gas companies?

A. By the weight of the holder.

Q. Is that not capable of being regulated if required?

A. No, sir.

Q. That weight?

A. It would be impossible to regulate the pressure at the holder in proportion to the demand from the people, because the demand is very variable; it is sometimes more, sometimes less.

Q. Is the pressure constant and uniform?

A. Yes, sir; in most large cities where they use gas for mechanical and heating purposes they maintain a full pressure all the time, although in some cases the pressure is reduced just in proportion as the people are consuming it, and increased when necessary. I will give a case of illustration in regard to pressure. A gas holder distributing gas with a six inch pressure and carrying it through a main six miles long from that city to a neighboring town, would furnish in that neighboring town but one-inch with its six-inch pressure at the holder.

Q. How do you calculate that?

A. It depends upon the density of the gas. It is fair for
9438 us to presume that a six-inch pipe one mile long would be reduced in delivering capacity ninety-five per cent. in that distance.

Q. Is that true as a general supposition?

A. Yes, sir, it is.

Q. Is it not true that a large amount of gas is consumed at a distance greater than six miles from the works?

A. Yes, sir.

Q. Measuring by the course of the mains of course?

A. Yes.

Q. In such a case is it practicable to apply an appropriate pressure at a holder?

A. It is a very difficult thing to do; they have to have an excessively high pressure in order to overcome any difficulties that may arise in the working of the pipes; all gas companies are obliged, in fact it is an absolute necessity for them to supply its consumers with a very high pressure.

Q. Of what practicable purpose are the registers of pressure you will find in the engineers' reports of gas works, a report of the New York Company, for instance, the report regarding the register of pressure at the holder gauge; of what practicable value is that record?

A. It is of no practicable value because the pressure indicated by that gauge might be very different than the result indicated in

your department. This pressure may be regulated according to the size of the mains, or according to the distance or length of the mains.

Q. As a matter of fact, how do gas companies determine what the pressure shall be at the holder when it is registered in the pressure gauge?

A. Generally at all remote points, they determine what it is there; if the consumers at remote points complain that their pressure is too low, the company increases the pressure for their benefit; but it is generally at remote points where it is determined.

9439 By Senator GILBERT:

Q. Is there no practical way of regulating that at the holder?

A. I cannot say; they can carry two *pounds* to the square inch if they wish.

Q. What they want then is some device that would give a correct record, when the person is remote from the holder?

A. Yes, sir, such a device would be of the greatest benefit to the gas companies, and would enable them to give a proper pressure and to correct to some extent excessive pressures.

By Mr. TREMAIN:

Q. What is the pressure that operates the amount of economical consumption and illuminating power?

A. Two-tenths of an inch; you will readily see that in order to maintain two-tenths of an inch the street pressure and main pressure must be very great.

Q. You have spoken of photometrical tests, and yourself and other witnesses have spoken of candle power—will you please explain what is meant by candle power or what it is that is tested by photometrical test so called?

A. We imply a scientific problem which varies the moment we leave the instrument which gives us our result; we compare a standard candle consuming one hundred and twenty grains of sperm an hour with an English standard Argand burner, consuming five cubic feet of gas per hour, the gas measured at a temperature of sixty degrees Fahrenheit scale—by arranging the two lights in a line at either end of a scale beam, the scale beam having a sliding index upon which is placed a double screen provided with translucent spots; we cause the rays of light to pass into the screen;

9440 we then move the screen until the diffusive powers of both lights are equalized, thus establishing upon the scale beam a fulcrum of difference in the penetrating power; this fulcrum of difference shows by leverage the exact number of candles and fractional portions thereof the gas-light is equal to of the candle opposite, according to the ability of our eyes to locate the screen properly on the scale beam, judging the translucent spots to be equal; this instrument is called a bar photometer and is the only one I know of which gives anything like correct results; there are other photometers, which judge the candle power by the height of the flame the gas passing under a given pressure through a fixed or-fice, but they are incorrect and fail utterly to give the penetrating or diffusive power of the light.

Q. Do you know the instrument that is used in this city; do you know if it is the bar photometer; is it used by the companies here also, in their measurements?

A. In their measurements, yes; they use the bar photometer for correct results and another instrument for approximate results; they use both instruments but they use the bar photometer to give result that could be sworn to.

Q. Is it not true that the presence of air in the gas determines its illuminating power?

A. Yes, sir.

Q. Is it not true then that if air can be present in the gas to an amount not sufficient to interfere substantially with the candle power, illuminating power, the consumers suffer a loss?

A. One per cent. of air would show in the candle power, and one per cent. would reduce the specific gravity of the gas, which makes it more dense; it would pass so much slower through the burner and register, so much slower at the meter, and it is suicidal in
9441 the extreme for any company to use air in the gas; it would redound against the gas companies; I do not think gas companies ever mix air with gas except by accident; it is sometimes done by accident, but not intentionally.

Q. In view of your statement, that there is a loss in passing through the pipe at a distance of six miles, I would like to ask you is it practicable, in your opinion, to convey gas a distance of one hundred miles?

A. Yes, it is.

Q. Or two hundred miles?

A. Yes, by using relays.

Q. Would the nature of the gas be of sufficient power to operate here?

A. Yes, by using pumps or relays.

Q. At how frequent intervals?

A. Well, if I was going to do that, I should put my relays twenty-five miles apart—governed by ground conditions.

Q. I understand you that the proper pressure at the burner is two-tenths of an inch?

A. Yes, sir.

Q. If you increased the candle power, that would have what effect upon the pressure at that point?

A. It would make no difference in the pressure but in the combustion; it would have no appreciable effect; for instance a gas under a two-tenth- pressure will burn without making smoke; the products of combustion are natural; if that gas be increased to thirty candle power, then the same quantity of gas does not virtually come in contact with sufficient atmosphere to consume it.

Q. A fair illustration in this city would be Equitable gas, would it not?

A. That gas will not burn at two-tenths of an inch at the tip without smoke.

9442 Q. What is their candle power?

A. Thirty candle power.

Q. Then for a gas of thirty-two candle power the proper pressure at the burner should be three-tenths?

A. Yes.

Q. And two tenths would be for what candle power?

A. From eighteen to twenty-two candle.

Q. You have expressed preference for gas of a low candle power, from eighteen to twenty-two candle power; now if you have a gas of thirty-two candle power with a pressure of three-tenths of an inch at the burner, would it not give an equally satisfactory result?

A. Well, you have a better light than twenty-candle power; you have one-third more light.

Q. Is there any reason why it is not more desirable?

A. It is to the consumer, provided he is not inconvenienced by smoke.

Q. Did I understand you to say that they could not regulate the pressure?

A. There is no device by which they can do so. If they had a device to regulate that pressure, then that gas would be more advantageous to the consumer, and the manufacturer would have to make less.

Q. The gas of a thirty-two candle power is worth more than the same quantity of gas of a lower candle power?

A. Yes, one-third more.

Q. Have we any device now by which gas of eighteen to twenty-two candle power can be properly consumed as it is burned at night?

A. There is no device that I am aware of in the market that will operate effectively or properly; there are a number of so-called automatic check burners, but none that I am aware of that ever operated very effectively.

Q. Does not a proper pressure result in perfect combustion ?

A. Yes, sir; but the devices which already exist for that
9443 purpose have been tried but have failed.

Q. Have you ever tried any experiments to ascertain that the gas is not fully consumed at the burner?

A. Yes.

Q. What is that experiment, and give the results?

A. Destructive analysis of the products of combustion; the results of the analysis would indicate excessive carbonic acid, sulphurous acid, sulphuratted hydrogen, bisulphite of carbon, carbonic oxide, free carbon, carbonic anhydrate, etc.

Q. Is there any other way you can determine the pressure of those impurities?

A. Yes, sir.

Q. Can you, in any way, show that out of the flame there proceeds a gas which can be re-ignited?

A. Yes; by placing a funnel-shaped tube and holding it in the flame of gas from an ordinary burner, with the narrow end upward, the gas can be ignited at the top.

Q. A funnel of about what length?

A. Well, of about four or five inches. Put the large end in the flame and you can see what gas escapes. In trying that experiment you want to get that tube below the top of the flame; if you do not

do that you will get products of combustion which are principally carbonic acid.

Q. Doctor, you say that you yourself have constructed some gas plant. Now if you consider yourself competent to say any thing about the amount of capital requisite to produce a gas plant of a given capacity, we would like to have your opinion on that subject, a capacity of at least one million.

A. I could give it approximately including generators, washers, hydraulic mains, purifiers, holders, etc. Beyond that it would be very difficult for me to do so, especially when applied to the city of New York, because here I do not know what it might cost
9444 to lay mains. I do not know what the price of labor is and do not know what they have to pay for the franchise, but as to the virtual plant itself, costs of pipes of putting them together, works of producing one million feet, I could estimate close on to it; it would depend somewhat as to what kind of gas they were going to make; producing one kind of gas cost- less than another; coal gas works cost more than water gas works.

Q. Is it true, that if a capacity of ten million is reached, or even five million, that capacity may be doubled, or at all events readily increased at a comparatively small increase of cost?

A. Yes, sir.

Q. In what relation?

A. There has been a marked development in the consumption of gas in all cities during the day; if the night consumption was equivalent to ten million feet, and the amount of gas required for heating, cooking and mechanical purposes should increase the amount to twenty million, the same mains and same holder would be used to distribute that gas, and the same meter would mark the combustion; it would be double the labor of the actual cost of distributing and of material, but I think a gas company can very well afford to sell gas for twenty five per cent. of the present cost for heating purposes alone; gas for day consumption costing less than for night consumption in labor and requiring no extra plant, they could well afford to put separate meters in houses; it would cost so much less to distribute gas for heating purposes, because it would be day consumption principally.

By Senator GILBERT:

Q. For which plant is already at hand?

A. Yes.

9445 Q. Is there a tendency toward the use of gas for heating purposes?

A. Very strong; consumption is increasing very rapidly in that way alone.

Q. That should decrease in itself the price of gas to the consumer?

A. Yes.

Q. They use it to heat rooms and to cook?

A. Yes, sir; very extensively; the treasurer of the gas company in the city of Providence told me within two weeks, that one-tenth of all the gas distributed by the Providence Gas Company was dis-

tributed for heating and cooking purposes, and that increase had been developed within three years.

Q. And at about what additional cost?

A. I do not know.

By Mr. TREMAIN:

Q. Then you think it is true that if the producing capacity of five million cubic feet has been secured, that a fair estimate for that capacity of plant is then $1,000,000 for a million cubic feet of gas?

A. No, sir.

Q. Is it true, including real estate?

—. No, sir.

By Senator GILBERT:

Q. It does not cost four times as much to produce twenty million cubic feet, as it does to produce five million?

A. No, sir, it does not.

By Mr. TREMAIN:

Q. Do you know — far that is out of the way?

A. I should say it was considerably out; I do not know as I am able to say exactly, as far as New York city is concerned, because I am not so familiar with gas distribution in New York city, but I know in other cities that twenty-five per cent. per thousand is a fair estimate, that would make it $250,000 instead of $1,000,000.

Q. You mean $250,00 per 1,000,000 cubic feet up to what producing capacity; it is not uniform?

9446 A. No, sir; of course I am going into those large figures without any precedent as to value of real estate.

(By Senator GILBERT:)

Q. You mean to say for instance that to obtain a producing capacity of 5,000,000 cubic feet, the capital would be say $1,400,000 exclusive of real estate?

A. Yes, sir.

Q. And the cost of franchise?

A. Yes; you would then have to fix a standard basis upon 1,000 feet; I would depend upon the standard; I do not know that there is any standard; I do not think that gas companies have any standard as they do not require it; they always find plenty of capital to transact their business.

Q. If it cost a given number of dollars to provide works by which to manufacture 10,000,000 cubic feet per day, representing that number of dollars by "A," how much in your opinion would it cost to provide works which would manufacture 20,000,000 cubic feet?

A. I should not place it higher than "A+¼," if all these things were in proportion exactly it might be figured but there are a great many things that are out of proportion; the day consumption is an important factor in that question; if 20,000,000 feet were delivered in twenty-four hours with a constant run at the holder and the same number of cubic feet were required to be delivered in twelve hours it would make a great difference.

Q. I was assuming that every thing was alike, same proportion by day and by night; do you so understand my question?
A. Yes; that would be the natural increase.

DECEMBER 28, 1885.

GUSTAVE KOBBE, a witness called by the counsel to the Committee, being duly sworn, testified as follows:

9447 Q. Where do you reside, Mr. Kobbe?
A. New York.
Q. Where is your place of residence?
A. One hundred and seven East 45th street.
Q. And your place of business?
A. Twenty-three Park Row.
Q. That is your office?
A. Yes, the office of the *Mail and Express,* I have a desk there, I am not regularly engaged on the paper.
Q. Your general business is what?
A. General writer for newspapers.
Q. Do you remember a paragraph to the following effect:
"Republican assemblymen who vote for the Gas Consumers' bill now pending will be strengthening the Democratic party in New York city, because the bill gives, after four years, the appointment of the three commissioners created, whose salaries and allowances for clerk hire aggregate $60,000, to the mayor, who, as New York is strongly Democratic, is usually a Democrat. That eminent Republican, Clarence A. Seward, writes to the New York *Tribune* that the provisions of the bill are self contradictory. Besides the bill brings what should be a private business enterprise into politics, and by fixing the price of gas destroys competition."
In last April or May, what did you do with it; do you remember the paragraph?
A. I think I wrote that paragraph; in fact I am perfectly sure I did.
Q. What did you do with that paragraph?
A. I believe I took it to the advertising agent; I asked him to insert in certain papers, the names of which I gave him.
Q. What was that gentleman's name; was it Mr. Sharpe?
A. Yes, he has testified here.
9448 Q. Who did you see in Mr. Sharpe's office?
A. I cannot remember.
Q. Would you know the man if you saw him?
A. I simply know it was an advertising office, and I know this man performed some functions in this office; I do not know if it was Mr. Sharpe or his assistant; I had no previous acquaintance with him.
Q. Was it Mr. Thomas, the cashier?
A. I do not know.
Q. Have you seen him since?
A. Yes; on the street.
Q. When?
A. Off and on.

Q. Did you talk to him about this particular occasion and this paragraph?

A. No.

Q. Did you make the arrangements with him to have it inserted in the papers?

A. I believe I did.

Q. A commission has been *said*, and allowed to Mr. Bangs?

A. He sent me to Mr. Sharpe; that is the way I came to go to him.

Q. Did Mr. Bangs go with you?

A. No, sir; he gave me a letter, I believe; the letter was simply introducing me; I think that was the way; I presented the letter indicated.

Q. At whose request did you prepare the paragraph?

A. I prepared the paragraph at the request of the Consolidated Gas Company.

Q. At whose request? Name the person?

A. Mr. Gawtry, the secretary, I believe.

Q. Did you personally see him?

A. I did.

Q. How long before?

A. I cannot say.

Q. Where did you see him?

A. I saw him at various times and various places; I cannot say exactly, whether I have seen him at his office or on the street.

Q. Tell the committee the whole story?

9449 A. I will narrate the whole circumstance, that is the easiest way; it is simply a business transaction and I have nothing to hide. Mr. Gawtry happened to know in some way, whether through conversation with me or not, I do not know, what I thought of the gas bill. He happened to know that I thought it was an impolitic piece of legislation, and he asked me if I could write some editorials from my point of view and I did so, and the question came up as to how and where to put these editorials; on looking over everything that had been written on the subject (Mr. Gawtry had taken clippings of what had been published on the matter *pro* and *con*, from different papers), I saw notes from letters contributed by lawyers and other people of prominence, mostly all in favor of the bill, I believe, and being a journalist my journalistic instincts told me that these were paid for, I had no moral certainty of this but I presumed they were, and that suggested the idea of meeting the case on the same line and the idea was to select a certain number of papers published through the country districts, and to have them publish these editorials; I believe there was one or more, either editorials or as reading matter, and I took these to Mr. Sharpe and handed them to him just as any advertising agent would take an advertisement for patent medicines.

Q. You left the paragraph I have read to you?

A. Yes.

Q. Nothing else?

A. Yes, I believe there were three other editorials; I wrote two Democratic editorials, and two Republican editorials.

Q. Any thing else?

A. Nothing else that I have any recollection of.

Q. In what papers did they appear?

A. I do not remember; I gave Sharpe the list; I took a
9450 list of the papers that appeared the most influential, but I cannot tell from memory.

Q. Do you know any Democratic paper that published it?

A. I think I went to Mr. Sharpe's office some time afterward—a few days afterward—and he said papers were beginning to come in containing it; I believe there were some Democratic papers.

Q. Was the New York *World* one of them?

A. No, I never knew it was in New York papers.

Q. Was it in the Albany *Argus?*

A. I doubt if the *Argus* was one; I do not know if it was on my list.

Q. Have you got your list?

A. I gave it to Mr. Sharpe.

Q. Have you a copy of it?

A. No, sir.

(The witness is here shown a copy of the list he gave to Mr. Sharpe, but states that it does not refresh his memory.)

There were thirty-seven papers on the list; I believe that Mr. Sharpe noted on the books; I think I saw in one of the newspapers a report of his testimony; the article was headed "a flood of editorials."

Q. Did that list exhause your list, do you think?

A. I should think it might; I really do not remember; the transaction has almost escaped my memory; I gave Mr. Sharpe the list of newspapers, and asked him to attend to the matter; I selected these papers from a newspaper directory, taking into consideration of course their apparent influence in their locality, and according to their politics.

Q. Were the three other articles after the editorials?

A. They were simultaneous.

Q. But in different language?

A. Yes, four different editorials.

9451 Q. This one that I read was for Republican papers, was it not?

A. Yes, sir.

Q. And the others were for Democratic papers, and in different language?

A. Yes, sir.

Q. You had acquaintances among the stockholders, had you not, of the Gas Company?

A. No, sir, I had not; I had formed opinions upon the subject from what I had in the newspapers.

Q. Was that before you talked with Mr. Gawtry on the subject?

A. Yes, sir.

Q. Did you talk with anyone else, except Mr. Gawtry?

A. No, no person except the people who represented him, I believe; I mean simply messengers.

Q. Who were the messengers?

A. I do not know if you can call them messengers; they went driving around doing collecting.

Q. Do you not know their names?

A. No.

Q. Do you not know at what place you met Mr. Gawtry at one time?

A. No, sir, I do not; I do not think I ever met him down town.

Q. Where did you meet him?

A. I think I went to the company's office; that is my recollection; I am quite sure I did not meet him down town.

Q. Did you never meet him any where else but at the company's office?

A. I think not.

Q. Did you not have a conversation with any one except with Mr. Gawtry or the messenger boy?

A. I don't want it to be understood that I spoke to the messenger boy; it was some one, as I said before, who went around in a buggy collecting bills; he brought me a letter from Mr. Gawtry, asking me to call on him.

Q. Do you know his name?

A. No, sir; I do not know his name.

Q. How many times did you see that person?

A. Not more than once, probably.

9452 Q. Then this compensation, was it exclusive of Mr. Sharpe's commissions?

A. No, sir; I received so much for writing editorials.

Q. That was from the Consolidated Company, by its check?

A. I cannot tell whether it was by check or money; they paid me for their editorials just as a newspaper would pay me.

Q. Was it Mr. Gawtry who made the payment?

A. I cannot tell you; but now when I come to think of it, I think it was Mr. Gawtry.

Q. At the office?

A. Yes, sir.

Q. That is about the whole story?

A. I think it is.

Q. Do you remember when it was that Mr. Gawtry sent this messenger for you?

A. No, sir; I do not.

Q. Well, about how long before that visit to Mr. Sharpe?

A. I presume it was some days before; but I do not remember exactly; I think the whole transaction occupied very little time; no more than two or three days.

Q. The whole affair?

A. Yes, the whole affair.

Q. So that it must have been shortly before you called on Mr. Sharpe?

A. I fancy it was shortly before my call on Mr. Sharpe.

Q. Did Mr. Gawtry by that note ask you to come to his office to see him?

A. I do not know.

Q. But as a consequence of that note you went to the office?

A. Yes—Mr. Tremain, let me tell you here that the first intimation I had was one afternoon while walking up town I met Mr. Gawtry on the street. I think he stopped me and asked me what I thought of the gas bill and asked me to embody my views in an editorial, and a day or two afterward I received this note, perhaps a shorter time than that; it is very hard to remember every detail when so many things have happened since then.

9453 By Senator GILBERT:

Q. In response to that note you met him where?

A. I think at his office.

Q. Was it then and there you made arrangements with him for the insertion of the editorials in those newspapers?

A. It was either there or the subsequent meeting.

Q. Had the article in the *Tribune* then appeared—the article to which I refer?

A. Yes; it must have appeared about that time; that is the letter from Mr. Clarence Seward?

Answer by General TREMAIN: Yes.

(By Mr. TREMAIN:)

Q. Did the other editorial then appear in the *Tribune?*

A. What editorial is that?

(By Mr. TREMAIN:)

Q. There was a short editorial in the *Tribune* which called attention to this letter?

A. That I do not know anything about.

Q. Were you then aware that this letter from Mr. Clarence Seward which has, by some, been styled an opinion, was prepared at the instance of parties interested in the Consolidated Gas Company, and paid for by that company?

A. No, I was not aware of it.

Q. Were you ever informed to that effect?

A. No, sir; I was not.

Q. Mr. Gawtry did not mention that that letter was procured by the officers of the company?

A. As I said before, he simply gave me what had been written on the subject *pro* and *con;* I was interested in the matter from the fact that I followed the newspapers very closely, and even if Mr. Gawtry had not called my attention to the matter, I would have seen it; I was interested in the business as "the *Sun*" took a decided stand in the matter, and as I contributed to the *Sun,* I took an interest in it.

9454 Q. Were you not aware that Mr. Hitchcock, of the *Sun,* was a large shareholder and was interested against the gas bill?

A. I was not aware.
Q. Did you hear of it?
A. I think it was intimated, but I have no regular connection with the *Sun* at all, I simply contributed to it as I did to any other paper.
Q. What else did Mr. Gawtry say about this gas bill?
A. I do not know, as I had no conversation with him beyond what related to my own services in the matter.
Q. Did he not say anything about the company fighting the bill?
A. No, sir.
Q. Or about the investigation that had been held?
A. No, sir.
Q. Did he introduce you to Mr. Smith?
A. No, sir.
Q. Did you never talk to Mr. Francklyn about it?
A. No.
Q. Do you know him?
A. No, sir, except by sight.
Q. Who first mentioned the matter to Mr. Bangs, yourself or somebody else?
A. I did; Mr. Bangs being in the business department of the *Mail and Express*, I thought he might probably know of somebody.
Q. Were these articles that were in the Democratic papers of greater length than the article or paragraph which appeared in the Republican papers.
A. No, sir; all about the same length, four editorials about the same length—two Democratic and two Republican.

NEW YORK CITY,
FIFTH AVENUE HOTEL, *December* 30, 1885.

The committee met pursuant to adjournment.
9455 Present: Hon. John I. Gilbert, Chairman, Hon. Michael C. Murphy.
Henry T. Tremain, Esq., appears as counsel to the committee.

FRANCIS W. SANBORN, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by the CHAIRMAN:

Q. Where do you reside?
A. In Brooklyn, at present.
Q. What is your business?
A. Gas saving.
Q. What, if any experience, have you had with the gas business?
A. I have been in the business for the last ten years of saving gas by attaching regulators and burners, and am manager of a gas saving company.
Q. What do you mean by gas saving?
A. The reduction of the gas bills in large establishments, where gas is consumed in large quantities; of a maximum light with the minimum of gas.
Q. Why do you say large establishments?

A. Because in small private establishments, very rarely the owners can be got to examine the matter; in large establishments it is a matter of great interest to the owners and proprietors.

Q. What do you call the apparatus used for that purpose?

A. A governor, or regulator.

Q. At what point is that governor applied?

A. Near the meter.

Q. What is the immediate effect produced by it?

A. It reduces the pressure in the mains. The pressure of the gas in the mains varies continually. The regulator makes it uniform on each floor in the building.

Q. The effect is to regulate the pressure at the point of ignition?

A. Exactly so.

9456 Q. Does your experience lead you to believe that it is practicable?

A. No well regulated institution should be without a regulator.

Q. Do you agree with a former witness, in the statement that a large per cent. of gas consumed is wasted, that is, produces no light?

A. Yes, from forty to fifty per cent. is wasted.

Q. The effect of that waste upon the quality of the air we breathe is what?

A. Very deleterious. It destroys the oxygen in the air, and fills it with carbonic acid, sulphuretted hydrogen and ammoniacal gases.

Q. What is pure gas?

A. The product of coal distilled and purified hydrogen gas and carbon mixed with oxygen.

Q. Do you know what pure gas is, as a matter of fact?

A. Yes, sir; I do.

Q. What are the component parts of pure gas?

A. Hydrogen and carbon.

Q. For illuminating purposes?

A. Yes, sir.

Q. What elements are liable to enter into that pure gas, rendering it impure?

A. The sulphur and ammonia which are in the coal at the time of distillation, if not properly purified, mingle with the gas.

Q. Those are foreign substances?

A. Yes, sir.

Q. Do you know whether gas varies in respect to purity?

A. Yes, sir, very greatly.

Q. Do you know whether or not the presence of these impurities can be easily detected?

A. Yes, sir; very easily indeed.

Q. Do you know whether as a matter of fact, there are in any places officers, whose duty it is to test the quality of gas and report?

A. I only know that in Washington there is an inspector of gas,

9457 whose duty it is to inspect the gas, and who does it every morning, and if it is not up to the standard of purity, he notifies the gas company that it must be brought up to that standard. That is done daily, consequently the gas company keep their gas up to the standard.

Q. Do you know the market price of gas in the city of Washington?

A. Two dollars and one half a thousand feet it used to be, I would not say what it is now.

Q. Do you know what it is now?

A. I don't.

Q. Do you know what it is in any other large city?

A. In Chicago $1 a thousand.

Q. Do you know what it is in Chicago?

A. Yes, sir, it is $1 a thousand.

Q. Do you know what it is at Pittsburg?

A. I think they use natural gas there, I don't know.

Q. What do you say as to the feasibility of using gas for fuel and power, as well as for light?

A. It should be supplied for from fifty to seventy-five cents a thousand for fuel—for heating purposes, and it is very feasible, and there are a great many stoves for that purpose all over the United States and in Europe; the food cooking on such stoves is about twenty per cent. more nutritious, and it avoids all bad smells and debris.

Q. What effect, if any, does the increased application of gas for various purposes have upon the price?

A. It reduces the price; a small increase of expense in enlarging gas works would render them capable of furnishing a large amount and consequently the price should be reduced.

Q. Do you know about how much gas per hour is consumed by an ordinary burner with the gas turned on, without any regulator?

A. A four foot burner will sometimes consume ten feet of gas an hour and a six foot burner from twelve to thirteen feet an hour.

9458 Q. What do you mean by a four foot burner?

A. A burner which is constructed to consume four cubic feet of gas an hour; we have a regular gauge which is called a regular pressure gauge.

Q. Is it possible for a meter which is well regulated to be so placed as not to actually measure the number of cubic feet escaping from the burner?

A. Yes, sir, very easily.

Q. Without reference to any leakage?

A. Yes, sir.

Q. Tell us how and why?

A. A meter is placed in a heated position, and the gas coming from the cold means in the street is largely extended, and consequently registers considerably more gas; in passing through the meter it is heated and extended.

Q. And after it has passed through?

A. Well, then it is cooled again and consequently condensed in the pipes of the house, and thus it registers largely in excess of the amount of gas which is consumed.

Q. In other words, if the meter is placed in a warm position the

gas is extended and the number of cubic feet of gas registered at the meter is correspondingly increased?

A. Exactly.

Q. Would you regard it desirable to have the regulator as near as possible to the point of ignition?

A. Yes, sir; the best effects are produced as near the point of ignition as possible.

Q. What result have you known to be reached by the use of the regulators?

A. I have known as high as sixty per cent. of gas to be saved.

Q. With what effect upon the light given?

A. Increasing the brilliancy of the light.

Q. And saving sixty per cent. of gas without loss of light?

A. Yes, sir, and rather increasing the brilliancy of the light.

9459 Q. That is not common?

A. No, sir; the common percentage that would make is thirty-three per cent.; that is the average of the saving, which is generally effected by a gas burner or governor.

Q. You regard it that there is so much wasted?

A. Yes, sir.

Q. Assuming that your statement is correct, it is conclusive in your mind that that amount of gas is wasted?

A. Yes, sir, and much more; I think fifty per cent is wasted; in putting on regulators we have to combat the idea that a regulator is something unnecessary, and out of the common course of things used by the gas companies, and for that reason we cannot alter the burners as we would like to; we would like to put on the burners with a governor, so that the hold should be uniform.

Q. Are you aware that at the present session of Congress a petition has been introduced from the citizens of the District of Columbia, asking that the price of gas be reduced to fifty cents per thousand cubic feet?

A. I have been so informed, but I do not know personally.

Q. Are you aware that in some cities gas is now being furnished at fifty cents?

A. I am not, no, sir.

Q. What elements are essential to the production of light?

A. Carbon, hydrogen and oxygen.

Q. How many of those elements does water contain?

A. It contains them all.

Q. Water?

A. Yes, sir.

Q. Does it contain oxygen?

A. It does not; oh, yes, it does, too.

Q. Does it contain carbon?

A. Not carbon; it contains hyd*or*gen and oxygen.

Q. That is the difference; the old formula I believe which is (H. O. 2); water contains, then, hydrogen and oxygen?

A. Yes, sir.

9460 Q. And the gas which we consume has to be furnished with the other element?

A. Yes, sir.

Q. Namely, the carbon?
A. Yes, sir.
Q. That is derived from what source?
A. Either from passing it over naphtha, gasoline or passing it through some element which contains carbon; I do not understand the process by which water gas is manufactured.
Q. Coal furnishes the carbon for coal gas?
A. Yes, sir.
Q. And for water gas?
A. Coal furnishes the carbon for that, I believe; I think they convert it into steam; then we have gas machines in which we use simply air, the air over naphtha or gasoline which is in the machine, and which gives a very rich illuminating gas.
Q. The candle power of gas is in proportion to the relative quantity of what element in it?
A. The carbon which it contains.
Q. Carbon?
A. Yes, sir.
Q. You said something about air as furnishing carbon or something of that sort?
A. I think not; the oxygen in the air we use acts in the same way; we enrich gas sometimes to sixty, seventy-five, and sometimes as high as ninety per cent. by passing it over naphtha or gasoline and making that reduction in the gas bills by so doing; but the insurance companies refuse to insure while naphtha or gasoline is used for carburretting purposes in the city.
Q. For what reason?
A. For the the reason of the danger of explosion from naphtha.
Q. How are those gas machines designated which you say are all alike dangerous?
A. All alike dangerous; I do not wish to say that; if the tank containing the gasoline is placed at a sufficient distance from
9461 the house. there is no more danger from gasoline gas than there is from coal gas, but where it is placed in houses there is very much danger on account of the volatile character of the gas of the naphtha.
Q. Distance lends safety as well as enchantment?
A. Yes, sir; there are thousands of them in use; in large mills and manufactories throughout the country.
Q. I will ask you one thing farther; a ton of coal will produce, or is necessary for the production of about how many cubic feet of gas?
A. About 9,000 cubic feet of gas?
Q. Is that coal wholly consumed in the production of the gas?
A. No, sir; there is a caldron of coke or residuum.
Q. Worth how much?
A. About three dollars a ton; and then there is about eleven gallons of coal tar.
Q. Worth how much a gallon?
A. About two dollars a barrel—about seven to ten gallons of ammoniacal liquor.
Q. Worth about how much?

A. Say fifty cents.

Q. What kind of coal is used in the production of gas?

A. Cannel coal or bituminous coal otherwise.

Q. Such coal in the city of New York costs about how much a ton?

A. From twelve to fifteen dollars per ton; I would like to withdraw the statement as to the value of coal; I would say I do not know.

Q. Have you any information as to the public regulation touching the pressure of gas in England?

A. Yes, sir.

Q. What are the sources of that information?

A. The different books published on gas consumption, technical and scientific works.

9462 Q. Name them?

A. Cathell's "Gas Consumer's Guide," "Letchers on Coal Gas," Wilkin's "Management of Coal Gas," Sugg's "Domestic Uses of Coal Gas," Moore's "Gas Consumer's Guide." That is all, I believe.

Q. What is your information?

A. The parliament compels the gas companies to apply regulators to all the meters which furnish gas in the city of London.

Q. At whose expense?

A. At the expense of the gas companies.

Q. Do you understand that those regulators are for the purpose of preventing this waste of which you have spoken?

A. They are.

OSCAR F. ZOLLIKOFFER, a witness called by the counsel to the Committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You are connected with the Consolidated Gas Company at the present time?

A. Yes, sir.

Q. In what capacity?

A. I don't know that there has been any particular distinction made since the consolidation.

Q. You are performing the same work you performed prior to the consolidation?

A. Not exactly, no.

Q. Where are you kept?

A. At Broadway and Forty-fifth street, the Metropolitan Branch of the Consolidated Company.

Q. Is that branch office the office of the old Metropolitan Company?

A. Yes, sir.

Q. Is the same business conducted there as was conducted formerly?

A. Well, the general work, yes.

Q. The difference in the actual work?

A. The direction of the company is at the main office.

9463 Q. In other respects is there any difference?

A. No.

Q. The same customers?

A. Exactly.

Q. And the same routine of work for collecting for gas sold to consumers continues at that office?

A. Yes, sir.

Q. Prior to the consolidation what was your work in the office?

A. I was secretary of the Metropolitan Gas-Light Company.

Q. What was your duties as secretary prior to the consolidation?

A. Had general charge of the office and attended the board meetings and taking the minutes, etc.

Q. Since the consolidation what do you do?

A. Have charge of the office?

Q. You remember the circumstances, do you not, that schedules of properties of various constitutent companies had been prepared and were under consideration during the summer of 1883 or during the years 1883 and 1884?

A. Yes, sir.

Q. Can you recall how early the first of any such schedules was prepared?

A. Eighteen hundred and eighty-four, probably; 1883 or 1884.

Q. You are cognizant of the fact that negotiations were going on with a view to consolidation?

A. Yes, sir.

Q. If you have any information as to how the item of $1,863,000 par value of stock of the Consolidated Company was awarded to the Metropolitan Company, or as to how the total amount of $7,781,000 of stock of the Consolidated Company was awarded to all of the constituent companies for so-called rights, franchises, etc., over and above the appraised schedules, please state to the Committee what information you have?

A. It was based on the business for the year October, 1882, to October, 1883.

9464 Q. Do you mean to say that having fixed the total capitalization, the difference between that sum and the total appraised values, according to the schedule, was so apportioned as capital among the constituent companies?

A. That is considered a fair value.

Q. Isn't that what you mean, that having arrived at the total proposed capital, the difference between that total and the total appraised values under the schedules, was apportioned among the several companies for their rights, franchises, etc., in proportion to the business of those several companies?

A. That was the method that those figures were obtained.

Q. How was that business estimated?

A. That was the actual business of the companies, the actual sales.

Q. You mean the sales of the gas?

A. Yes, sir.

Q. And the sales of gas for the entire year?

A. The entire year.

Q. Where will be found any record of that computation?
A. I could not tell you that.
Q. Who made it?
A. I do not think I know; in fact, I do not know.
Q. Do you know what percentage that computation exhibits?
A. I could only ascertain it from the quantities there, that is the only way I could determine it, figure it down for each company.
Q. If I take those percentages as they appear from the schedules, they should represent if you are correct, should they not, the percentages of business?
A. The relative business of all the companies for the year from October, 1882, to October, 1883.
Q. Was that capital of $45,000,000 fixed with regard to the market value of the stocks?
A. Not to my knowledge.
9465 Q. Was this apportionment for the balance of capital of the so-called rights and franchises made regardless of the market price of the stocks?
A. Entirely so.
Q. Where did you get your information about that?
A. What is that?
Q. About the apportionment of this balance of capital for franchises, etc.?
A. I was present at all the metings.
Q. Well, with whom?
A. With all the gentlemen who represented the seven companies.
Q. Just designate them?
A. Mr. Lees represented the New York Company, Mr. Smith represented the Manhattan, Mr. Gawtry represented the Municipal and Knickerbocker, I think, or one company, at all events; Mr. Zollikoffer represented our company, and Mr. Moss the Harlem Company.
Q. What was the first step taken to arrive at this capitalization which was under consideration by those gentlemen?
A. This plan was agreed upon and it was carried out.
Q. When was the first time that $45,000,000 was mentioned?
A. That would be very difficult to say, because there were a great many conferences, and it would be difficult to say when it was first mentioned.
Q. What other sum was ever mentioned as the total proposed capital except $45,000,000?
A. There might have been other sums during the negotiation, but I do not remember any of them.
Q. Do you know how that sum was arrived at, or was it done arbitrarily?
A. It was supposed to be the fair value of the property.
Q. Well, for the purpose of distributing the proceeds of the business during the pooling arrangement, there seems to have
9466 been established, according to the books of the pool, a ratio of distribution between the several companies?
A. That is right.
Q. And that ratio appears to have been established by those tables,

according to the business done during the quarter ending February, 1880. Do we understand your testimony to mean that no regard was had to those tables in the distribution of this capital?

A. No, sir; none whatever.

Q. What do you know about the persons named or selected by the constituent companies, beginning with the New York Company, for the purpose of appraising the value of the plant with a view to consolidation? Did you ever hear any thing said on that subject?

A. Mr. Rowland was the appraiser of the New York plant.

Q. Who selected him?

A. Every company selected their own appraiser as far as possible; I think the New York Company must have selected him.

Q. Do you know any thing about the plant of the New York Company?

A. I know it in a general way; I am not familiar with it as I am with our own, of course.

Q. Was any other appraiser ever named for the New York Company?

A. There was one spoken of besides Rowland.

Q. Who spoke of him?

A. I am of the impression it was O. Zollikoffer.

Q. To whom did he mention him.

A. He mentioned him to the committee generally.

Q. What was his name?

A. William Farmer.

Q. Was he accepted?

A. He made figures for the Manhattan.

Q. Was he accepted for the New York?

A. That I could not tell you, sir.

9467 Q. What became of the figures he made for the Manhattan?

A. I do not know; I think they are the basis for the appraisal.

Q. Did you ever see them?

A. I saw them.

Q. Did you see Mr. Farmer's certificate?

A. I did not see his certificate, but he made figures for the Manhattan.

Q. The committee have never seen any such paper, and if there is any such thing in existence, we would like to be advised of it, so as to see it; what do you know about Mr. Farmer?

A. He is a gas expert and engineer.

Q. About his acting for the Manhattan?

A. I will correct my testimony; the schedules of value of the plant of the Manhattan were made by Thomas F. Rowland, and not by William Farmer; Mr. Farmer commenced on the schedules; did not finish.

Q. Didn't Mr. Farmer go through the New York works?

A. No, sir.

Q. According to the appraised schedules, the value of the plant, so called, of the New York Company, exclusive of the street mains, valves, meters, services, lots, bulkheads, piers, office buildings, furniture, etc., appears to have been fixed at $2,874,000 in round figures;

is that, in your opinion, a fair and liberal or excessive valuation of that plant in its then condition for the purposes of sale?

A. I should have to be governed by Mr. Rowland's certificate, for he is a credible man and an expert; I do not know sufficiently of the New York Company's plant to give an offhand estimate of it.

Q. The capacity of the New York Works?

A. I could not tell you.

(By the CHAIRMAN:)

Q. Have you an independent opinion as to whether or not the sum of $2,874,922 is an excessive valuation of the property
9468 specified by counsel in the last previous question?

A. No, sir; I have not.

Q. Assuming the capacity of the New York works to be about 6,000,000 feet per day, and that the real estate, the lots, street mains, valves, meters, services, bulkheads and the office buildings are separately estimated, have you an independent opinion as to what is a fair price for the plant that will produce that capacity?

A. No, I have not.

Q. Have you an opinion as to the value in November, 1884, of the plant of either of the following companies, viz., the Knickerbocker, Metropolitan, New York or Harlem?

A. I have not; I could speak of our own on that point only, that is the Metropolitan.

Q. Do you know any thing about the method adopted, if any method was adopted, by which the real estate or lots of the constituent companies was valued?

A. I can speak of the Metropolitan.

Q. What was adopted there?

A. We took a real estate expert to value the land.

Q. What was he instructed to value?

A. Simply the land as it was without the buildings on it, and land under water.

Q. Is his report in writing?

A. Yes, sir.

Q. To whom was it made?

A. Mr. Zollikoffer.

Q. Where is that paper?

A. It must be in our office.

Q. Do you know of any real estate expert having been selected by any of the other constituent companies to appraise your real estate or their own?

A. I do not know of any such.

Q. Was any thing said by any of the representatives of the constituent companies as to how the lots should be valued?

A. Well, the general understanding was the market value.

9469 Q. How was that to be arrived at?

A. I suppose they informed themselves of the value of the property in that neighborhood.

Q. As a matter of fact, didn't each company value its own lots?

A. It did.

Q. Your company took no steps to verify the value of the lots of the other companies, did it?

A. Yes, sir.

Q. What did it do?

A. It took information on the values of the others.

Q. From what source?

A. From the same source we took our own.

Q. Sent an expert?

A. Yes, sir.

Q. Did you send an expert to the real estate of all the companies?

A. We did.

Q. Did any other company do the same thing?

A. We do not know; at least I do not know.

Q. If you will kindly get, or send and get those papers for the chairman, relating to the whole valuation of the appraisal of lots to all the companies we will be much obliged. As secretary of the old Manhattan Company, as representing its stockholders, I would like to repeat to you a question which has been asked of some of the officers of the old companies. By the rate of distribution of the Consolidated stock it appears that 260 shares of that stock were awarded for 100 shares of the stock of the Metropolitan Company, that at the time of that distribution the market price of the Consolidated stock was quoted at about eighty-five by that exchange and according to the price of the Metropolitan stock, as testified here to have been about 240 or 250, there would seem to be a loss on the transaction by the exchange of each 100 shares of the Metropolitan stock of about $1,900. Assuming the price of the Metropoli-
9470 tan at 240, will you tell the committee, what, in your opinion, was the advantage to the Metropolitan stockholders in that transaction?

A. You are asking me now about the market value which was not considered at all. I could not tell you about that.

Q. My question assumes the market value at the prices I have stated, because it already appears in the testimony here and based upon that assumption, was there any advantage to the stockholders of the Metropolitan?

A. The matter of market value was never considered and the market value fluctuated very much during the negotiation. The Metropolitan was 255 at one time and before we went into the consolidation it was down to 225.

Q. It did not fluctuate as much as that in any year?

A. Yes, sir.

Q. During how long a period?

A. Nine months.

Q. Was there any advantage, in your opinion, either to the public or to the shareholders in this consolidation of the constituent companies entering into it at the capitalization adopted by it?

A. We thought there was an advantage in it.

Q. Well, now explain why?

A. The reason is this: That we were liable to compete with one another and have what we would call a gas war, which was probable or possible and rather than have the property of all the companies

injured, which it would have been, a consolidation was determined upon.

Q. Well, that was the controlling reason, wasn't it?

A. I cannot say that other companies looked at it in the same light, but our company thought it was best for our stockholders to do it.

Q. For that reason?

A. Yes, sir; but there were other reasons.

Q. Was it the chief reason?

A. We have twelve directors, and every director will look at it from his own standpoint.

9471 Q. Was that your view of it?

A. As far as I could look at it from being a director; that was my view of it.

Recess until 3 P. M.

DECEMBER 30, 1885—3 p. m.

Hearing resumed.

EDWARD G. LOVE, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by the CHAIRMAN:

Q. Where do you reside?

A. Sixty-nine East 54th street, New York city.

Q. Do you hold any official position?

A. I am gas examiner in the department of public works.

Q. Was you appointed under any statute?

A. No, sir; I was appointed by the commissioner of public works under a resolution passed by the board of aldermen.

Q. What are your duties?

A. To make daily tests of the illuminating power of the gases supplied by the seven companies on Manhattan Island; I also keep a record of the pressures at the various photometric stations and make an analysis of the various gases from time to time, to ascertain impurities.

Q. Are you required to do all these things by the resolution under which you was appointed?

A. I think the resolution says merely to test the gases under illuminating power primarily.

Q. You are required to make examinations as to the illuminating power of gas?

A. I am.

Q. And that you do how often?

A. Every day.

Q. Your report is published how often?

A. I make weekly reports to the commissioners and they are published in the *"City Record."*

Q. Are you required under the resolution to test the quality

9472 of gas?

A. As regards purity, I think that may be a part of the resolution; I was asked to do it; I believe I am.

Q. Of course, it is by resolution of the board of aldermen?
A. That is my impression.

(By Senator MURPHY:)

Q. The principal part of the work is done by ordinances; the common council directs how the work should be performed; is there any standard of purity of gas, so far as you know, fixed by law, or by an ordinance of the city, or by contract with the city?
A. There is.
Q. Is there any fixed, specified definite standard?
A. Nothing that is definite; it has a certain standard but it is very indefinite.
Q. No limit set to it?
A. No limit whatever.

(By Senator MURPHY:)

Q. I think that possibly the witness may not rightly understand the question; if I recollect correctly, the testimony was given that in contracting with the city to illuminate the streets there was a set standard, about eighteen or twenty candle power.

Mr. TREMAIN: That is, illuminating power.

The CHAIRMAN: I am speaking now as to purity; do you know whether under any provision of law, a standard is fixed?
A. Not in this State.
Q. Is there anywhere?
A. There is a law in Massachusetts and also in the State of New Jersey; the law in Massachusetts is enforced and I think in New Jersey it is.
Q. You know how it is in London?
A. Yes, sir; there is a very rigid standard there; at present the law allows twenty grains of sulphur to 120 feet of gas, and four grains of ammonia to the same quantity; if at any time it is in excess of these quantities the companies furnishing such gas are liable to a fine.
9473 Q. What, if any, provision is made for testing it?
A. There is a regularly appointed board consisting of three members and the gas is tested by gas examiners in various parts of London.
Q. Is your knowledge to the effect that the law is enforced there?
A. It is very rigidly enforced there.
Q. That serves, then, does it not, as a protection to the consumers to that extent?
A. It does.
Q. What is absolutely pure illuminating gas?
A. The gas which contains no carbonic acid, no sulphuretted hydrogen, or other sulphuretted compounds, and no ammonia.
Q. The pure things?
A. Hydrogen, marsh gas, carbonic oxide and illuminants.
Q. Mention the elements that compose pure illuminating gas?
A. They all contain carbon and hydrogen, with the exception of hydrogen gas, which, of course, is an element in itself, and oxygen,

which is a part of carbonic acid, and sulphur and nitrogen; that is all.

Q. The impurities which you have spoken of are, of course, injurious, are they not? I do not know whether you have analyzed those?

A. I have; the impurities as they exist in the gas are changed in the combustion of the gas.

Q. And produce things which are hurtful to those who breathe it?

A. In the same way that the air is hurtful, on leaving the lungs, from carbonic acid—differing in degrees and also kind, to a certain extent.

Mr. TREMAIN: I think I ought to state to the Committee that the efforts to procure Mr. Day's attendance have utterly failed. The Committee may remember that when Mr. Day was temporarily excused from the witness stand, it was with the understanding
9474 between himself and the Committee that he would attend when wanted. A day or two afterward he wrote a letter to Senator Jacobs, who produced the letter before the Committee, and whose testimony disputed in part that of Mr. Day. Some of the statements in that letter are not in harmony with Mr. Day's testimony. Day was then notified by the Committee to attend; through his firm a reply was received that he was out of town. Notice was afterward sent to him to attend. Whether he has actually been in the city or not, I do not know, but he has been reported in the public prints as having been in the city since that time. The sergeant-at-arms reports as the result of his efforts to serve a subpœna upon him, that, both at his place and his residence, he has received replies that they did not know where he was. We despair of getting his testimony.

The CHAIRMAN: I have been informed by the sergeant-at-arms that he has made diligent inquiries and efforts to procure his attendance. We regret very much our -ability to procure his attendance, but it seems impossible to do anything farther about it.

DANIEL E. SICKLES, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. General Sickles, will it be agreeable for you to tell us what was decided by Judge Van Vorst in your suit which you had with the gas company?

A. I will try.

Q. Will you kindly state to the committee what was the point of law that was decided, and what were the facts submitted upon which that decision was based in the suit which was brought before
9475 Judge Van Vorst in equity in the Supreme Court, where you was the plaintiff and one of the gas companies was defendant?

A. The issue before Judge Van Vorst was only an issue of fact; the issue at law had been already argued and decided at a Special Term by Judge Lawrence, and afterwards it was decided at the General Term.

Q. I was not aware that it had gone to the General Term; what was determined by that litigation and the facts upon which it was based?

A. Perhaps a short statement of the case will indicate more clearly than any other way what it was about, and what was decided. In 1881 and 1882 I occupied an apartment on the premises 14 Fifth Avenue, an apartment house; gas was supplied to all the occupants by the Manhattan Company; all the consumers there grumbled at what they regarded as excessive and wrongful demands on the part of the company, and we all employed such reasonable remonstrances as occurred to us in vain, as usual, and the other occupants, as usual, submitted to it and paid. I refused, whereupon steps were taken by the company to cut off the supply of gas from my premises. I forbade them, and instructed my servant not to allow any representative of the gas company to have access to my meter or pipes except upon his assurance that his only motive was to ascertain what the meter suggested as to the consumption; threats were made by the company to arrest my servant, and they persisted in their efforts to get access to my premises to cut of the supply, whereupon I applied to the Supreme Court upon a statement of facts that the charges were believed by me to be excessive and extortionate, and they threatened, unless I submitted, to cut off the supply. I represented these facts; an injunction was issued forbidding the company to interfere
9476 with my supply of gas until it should be ascertained what amount was justly due, for what I had consumed. That was a temporary injunction, and the matter came before Judge Lawrence on an order to show cause why it should not be continued until the final hearing; and after argument Judge Lawrence continued the injunction, holding that the company had no right to cut off the supply of gas from a consumer who stood ready and willing to pay for what gas he had actually consumed, leaving the company to establish that fact by such evidence as they could furnish. The intention of the company evidently was that it was my duty to pay their bills as they presented them and to accept their meter as law and without court or jury. And if I found that I had been overcharged, my business was after paying them all that they demanded to commence a suit against them and recover back any extortionate charge I established; that was overruled by Judge Lawrence and he held it was a proper case for an injunction. The Manhattan Company appealed to the general term of the Supreme Court from Judge Lawrence's adjudication. The matter was argued there by John Graham in my behalf and with equal ability by Mr. Anderson for the company; and the general term unanimously confirmed Judge Lawrence's decision, and the gas company did not go to the court of appeals, and thereupon issues of fact were formulated and tried before Justice Van Vorst at a special term. The issue of fact was mainly how much gas I had consumed. The company as usual relied upon the meter. The president of the company was there to explain the meter, and the vice-president and engineers and the

manufacturer from the American Meter Company and Mr.
9477 Chandler. All swore that the meter could not lie, but Judge Van Vorst found it did lie and decided against the company, holding that their bills were excessive and that they did not establish their case by their meter, leaving them to proceed by further suit at their discretion to establish their demand, for which I have vainly waited ever since, and have not heard any thing farther.

Q. The issue of fact in the case concerned the quantity of gas consumed and not the rate at which charge should be made?

A. No, sir, no question about rate. Unfortunately, the company have since reduced their rates and my bills are larger than ever.

Q. If your experience in that line leads you to believe that you can throw any light upon the subject matter that this committee has under investigation, they would be pleased to hear it?

A. Well, I do not know that I could guide the committee. I fought my fight and won it, and I suppose any other consumer can do likewise if he chooses. I suppose as a citizen and consumer that it is the right and duty of the legislature to fix the quality of gas that these companies should furnish and the price, and I suppose that if the consumers choose either individually or by combinations to resist these extortionate demands, of which we hear so much complaint, that the law as established in my case, and I believe confirmed in other subsequent cases, would afford adequate remedies. When gas companies combine consumers should unite. And if consumers unite and employ General Tremain to resist unjust demands and go to the courts, they will get justice; that would be my advice; fight it out; they have no power; they threaten most people effectu-
9478 ally—successfully by saying they will cut off the gas if you do not pay the bills, and housekeepers and consumers do not want to have that threat put in force, and they submit. New York is an easy-going town and submits to almost any thing, no matter whether it is a railroad, gas company, telegraph company or any thing else; but whenever a citizen chooses to say to any of these companies "halt, you must not do this," those who go to the courts are protected; that is my experience; for individuals to do that sometimes it costs more money and time than they are willing to give; but consumers, of whom there must be many thousands in New York, could easily unite and organize, and a thousand of them would be a batallion strong enough to fight the Consolidated Gas Company. The legislature, I suppose, can and should fix the price of gas, having in view a reasonable dividend on the stock, and, I think certainly should fix the quality of the illuminating power of the gas furnished.

Q. And the purity of it?

A. Yes, sir; both for sanitary and economical reasons. Now, gentlemen, that is all that occurs to me. I would be happy to answer any question that General Tremain, or any other gentleman, may ask.

General TREMAIN: The only point of immediate inquiry has already been responded to.

(By the CHAIRMAN:)

Q. In speaking of a reasonable profit upon the stock of the gas companies, do you mean the actual paid up stock of the company or the nominal stock of the company fixed according to the pleasure of the company or companies, as the case may be?

A. Oh, sir, the basis for the legislature is the actual value of the plant—cost of the plant, cash or stock paid in, because if you leave the company to fix arbitrarily their own values upon the
9479 plant and their privileges, franchises, the most valuable parts of it are derived from the public—municipal and State. Why, your ground would be taken from under your feet; ten per cent. on a cash capital paid in is as large a dividend as any corporation in this country is expected to earn.

Q. That is the same as five per cent. on capital stock nominally doubled without any actual increase?

A. Yes, sir; this process of watering Elevated stock or gas stock is an abuse calculated to blind the public as to the cost of these properties, and the proper share of the earnings to indemnify the companies for their risk, etc.; but for the legislature, I should say always the real actual money paid in is the proper basis which should determine the value of the property and the amount of dividends fairly to be earned.

Q. Is it, in your judgment, a great evil and a growing one, this watering of corporate stock?

A. Oh, yes, sir; I regard that as one of the most demoralizing perhaps tolerated in this country on the part of corporations.

Q. Demoralizing to the public and the instrument of undue exaction to the public?

A. Yes, sir; it affects our commerce and is very oppressive upon the poor; rich people with large incomes can stand any reasonable amount of that sort of thing; but after all the great burden is borne by the poor who should not be forced to bear it; these great franchises are given for the public good and not for the private benefit of grantees.

Q. You think it is contrary to public policy to permit corporations to water their stock?

A. I do, sir, consider it contrary to public policy and productive of great public evils and producing private injury to citizens.

Q. Both to those who perpetuate it and those who are affected at the other end?

A. Yes, sir.

9480 Q. Investors also are injuriously affected?

A. Yes, sir! it is one of the direct reasons for those fluctuations in values of securities, and causes that uncertainty in price which is a great injury to investors and which also injures the public credit so far as the public credit is affected by the reputation of corporations and the securities they issue.

Q. Like any other wrong it does not fit in the proper state of things at any point?

A. No, sir, and like any other wide-spread public wrong it brings in its retribution upon that community that hovers it.

Q. Cannot come in on the right order of things with impunity anywhere?

A. No, sir; take the farmers, for instance; they have been enjoying a lucrative foreign market for their products—their wheat, corn, cotton, etc., and they are now confronted with competition from India, Egypt, and Australia, which puts them at a disadvantage in the European markets; and if you analyze the cause of that successful competition you will find it grows out of excessive freight charges and excessive terminal charges—the greater cost of transportation and shipments in this country, as compared with the other countries I have mentioned, who are becoming now our competitors in the production of these commodities—and this excess of charge is mainly produced by the necessity or apparent necessity that existed of the earning of dividends upon supposititious values and it has a prejudicial effect upon the producing classes where all our real wealth rests.

Q. This dividend upon fictitious stock enters as an element, of course, in the consumption of the products affected by it, made by it or transported by it, as the case may be?

A. Certainly; the consumer is expected to pay and does
9481 pay, in the long run, a dividend upon whatever value corporations see fit to place upon certificates, if they double and quadruple the supposed capital, they are expected to keep up a high rate of dividends on their capital whatever it may be and to do that, they must earn enough out of their patrons to justify their claims as to the supposed value of their property, and all that comes out of the pockets of the consumer; that is the way I understand it.

OSCAR ZOLLIKOFFER, being duly recalled, testified as follows:

Examined by Mr. TREMAIN:

Q. Since your testimony was suspended have you found any memorandum or papers by which your recollection has been refreshed touching the various propositions that were under consideration, leading up to consolidation and the proposed capital?

A. I have found some, General; but I must say I don't know which of them has been more or less adopted; it is only discussion that we had.

Q. Well, please show the Committee any memorandums that were in use, whether adopted or not, relative to the total capital proposed at any time?

A. I have found one which was discussed at the different meetings but was not adopted; it was my duty to report to my board what was done there, discussed from time to time as I reported in that way; so I found one on the 9th of September, 1884, in which I insisted that the capital should be not more than $43,000,000, if all the companies joined.

Q. Including the Mutual?

A. Yes, sir, including the Mutual, and it was adopted; it was a memorandum for myself; the book is different.

9482 Q. Prior to that time had not the sum of $45,000,000 been suggested?

A. I think—yes, it was prior to that, but I was always in favor of a great deal less.

Q. How much was you in favor of?

A. At the most, $35,000,000.

Q. Including the Mutual?

A. Yes, sir; but still that don't mean that I set a different valuation; I think it is the same in all this property; it comes to the same whether you make forty-five or thirty-five; they are not injured by it.

Q. That is between the different companies?

A. The different companies.

Q. You mean that the aggregate should not exceed $45,000,000 instead of $35,000,000?

A. Yes, sir; such memorandums I have a number of; but I do not *think* which one afterwards finally came to a negotiation and the other sums were agreed to.

Q. Who proposed to increase it?

A. Well, most every other company.

Q. I understand you to say that as a result of the conferences in the committee you reported in your board what those considerations were?

A. Yes, sir, from time to time; that is one of them and I have perhaps two dozen of them or more.

Q. Up to the 10th of September it would appear by this memorandum, that the companies had not in fact agreed upon the proposed capital?

A. No, sir; they had not agreed up to that time, but did shortly after; but you see I was very decided on my part; I do not like to submit those papers because they are not in shape; I would write them over if you want it; they are merely for my own guide; I reported from time to time to my board.

Q. You say, in your opinion, you did not think the total should have been more than $35,000,000?

9483 A. It was my first opinion that it would be better for the whole company that we make only that rate; I did not want to swell the amount.

Q. On what did you base your opinion?

A. We paid a very small—only two and a half millions in proportion to our business and therefore we paid after a while more dividends in proportion then if we had a swelled capital like the others.

Q. What others?

A. Those that had elegant houses and everything that way; our works are very plain and the machinery is good as I said before.

Q. Which company has got their figures up?

A. Well, I think every one, beginning with the New York, that is the oldest; they remodelled their works entirely; they were formerly simple and plain like ours, and afterwards spent heavy sums in changing their works, and there were some other newer companies who had larger buildings and every thing more elegant than we have.

Q. What were the reasons suggested by any of the companies why the total should be $45,000,000 instead of $35,000,000?

A. That was about the value or the market price of the stocks at that time.

Q. Those market prices depended, of course, upon the dividends that were being paid?

A. By the stability as they expected the business should be.

Q. Is it a fact that the consumption of gas is uniformly increasing?

A. Yes, sir; but we are provided with the electric light, and with the fuel gas which comes out of the ground.

Q. That depends upon the future?

A. Yes, sir.

9484 Q. Considering the age of the companies and their business and the extent of their works and producing capacity were not the valuations for the Municipal and Knickerbocker Companies, in your opinion, excessive?

A. Well, that was my impression.

Q. What is your impression now about that; they were valued in the schedules, $18,100,000; isn't that valuation in its relation to the values placed upon the properties of the other companies, in your opinion, excessive?

A. I think it is; still, I do not want to say that I am an expert in the valuation; I think I understand it; I opposed it as long as I could.

Q. In comparison with your own company, which is a long established and well known property, for which the valuation is fixed at $7,175,000?

A. I claim more to that in proportion; therefore, I must say I was convinced we were not in the same ratio to it as others.

(By Senator MURPHY:)

Q. You believed that your property was worth more than the Consolidated representatives allowed you?

A. Yes, sir.

(By the CHAIRMAN:)

Q. In proportion to their values?

A. Yes, sir, in proportion to their values; this is all an idea in the form of a comparative thing; six months before when we first submitted our values—there would more come to the point, but I must say I have mislaid those papers or torn *must say I have mislaid those papers or torn* them up; I know they were entirely different.

Q. Give your best recollection of what it was as proposed by you?

A. It was considerably less in that paper that you will get to-morrow about the valuation; it will indicate to you more than any thing else what the standard then was, because it was an impartial outside man who knows the business who made the appraisement; I looked for the paper and I think there is no doubt I can find it by to-morrow morning and deliver it to you.

9485 Q. Well, these figures that you speak of as having been proposed six months before September, 1884, bear a different relation, do they not, in the values of the companies' properties to each other?

A. I told you I was for $35,000,000, and I based my first valuation always in proportion to each company, and on the $35,000,000.

Q. In verification of a former answer, and with a view to its farther explanation, if there be any, I call your attention to the memorandum under date of September 9, 1884, that you have just submitted; in that memorandum there appears to be a proposition that the total capital shall be $43,000,000, with a million reserve for working fund and the distribution of that capital shall be as follows:

New York Company	$7,500,000
Manhattan Company	12,000,000
Mutual Company	5,600,000
Municipal and Knickerbocker Companies combined	7,600,000
Metropolitan	7,600,000
Harlem	2,700,000
Total	$43,000,000

The schedules as already in evidence show that upon a larger capital of $45,000,000 estimated there was apportioned $8,000,000, for the Municipal and Knickerbocker combined, and $7,175,000, to the Metropolitan; there is thus a larger allowance to the Municipal and Knickerbocker, and a smaller allowance to the Metropolitan of about half a million, which was on a total smaller capital; explain how that came about?

A. I claimed that ours was too small in proportion, but the majority finally fixed upon the others, and I could not resist it.

9486 Q. You was overruled?

A. I was overruled.

Q. In the value of your own property you made an offer to have your property fixed in the same proportion?

A. Yes, sir.

Q. And that was not granted, and the representatives valued your property, as indicated in the exhibit, against your wishes?

A. Yes, sir.

Q. I want to know who voted upon that?

A. The representatives of the different companies.

Q. Did the Knickerbocker count one vote in getting at that majority and the Municipal count one vote, making two votes?

A. Yes, sir, making two votes; the Mutual could not get in because its charter made it a misdemeanor.

Q. Did the Mutual vote upon that?

A. The Mutual voted upon that, I suppose.

Q. Was your attention called to the excessive valuations of the Municipal real estate?

A. I insisted at many meetings that they should have one appraiser, and I wanted to go by that appraisement that would be submitted.

Q. The same appraiser for all the property?

A. Yes, sir.

Q. Who objected to it?

A. The majority.

Q. Did Mr. Smith?
A. Not exactly so much Smith as the others.
Q. Mr. Gawtry objected to it?
A. Certainly.
Q. Mr. Franklyn?
A. Certainly.
Q. Mr. Lees objected to it?
A. Certainly.
Q. Do you know what become of the appraisement that was made by Mr. Farmer of the Manhattan plant?
A. I never saw it, only at the meetings; I never saw it afterward.
Q. Didn't Mr. Farmer appraise the entire New York plant?
A. No, sir; I suppose he was interrupted when he did; he did a part.
Q. Why was he stopped?
9487 A. They wanted to shove the thing through, and the same time there were certain things he did not appraise high enough.
Q. You do not know how the committee can find any of those memorandums?
A. No, sir.
Q. Who did you hear say that?
A. At the pool meeting.
Q. They were talking about the plant?
A. Yes, sir, about all the plants.
Q. Didn't they get the New York plant high enough?
A. In my opinion, but I was only one out of seven.
Q. Do you think they got it too high?
A. I do not know.
Q. Did they get it too low in your opinion?
A. No.
Q. You think they got the Manhattan plant too low?
A. I must say it was not too high.
Q. You think the New York was too high?
A. I think it was; I was so impressed at the time, and I told them so.
Q. You think they got the Knickerbocker too high?
A. Yes, sir.
Q. There is no doubt about that?
A. No doubt.
Q. Did you tell them so?
A. Well, I must have told them so for I insisted upon another amount.
Q. Did you tell them the Municipal was too high?
A. I insisted also upon that, that it was too high; I never said any thing against the Mutual; it was a fair valuation.

Mr. TREMAIN: The figures show that there were some of them who did not contend against, and others who did.

Senator MURPHY: He says he was outvoted; that is the substance of his evidence.

The CHAIRMAN: Unquestionably undervalued and outvoted.

9488 Q. Did you say any thing about the Harlem?

A. I think that was one I differed with a great deal; there is no doubt I was correct in my views.

Q. You have not had any reason to change your opinion since?

A. No, sir.

(By the CHAIRMAN:)

Q. Did your company pay any thing for any franchise at any time?

Q. When we started in 1858 we had to; not we but the predecessors had to pay for the franchise.

Q. Who?

A. The owners who had the charter.

Q. The franchise came originally from the people?

A. Yes, sir; it was offered here in the market.

Q. Did the people get any thing for those franchises; did the people sell those franchises to anybody?

A. The whole of those franchises?

Q. Did the people sell any of the franchises of any of these companies that entered into this consolidation?

A. Not that I know of.

Q. The franchises were from the people and given by the people?

A. I do not know that the people ever got any thing.

Q. They were given by the people?

A. Yes, sir, and those that made use of it transferred it to us at a certain percentage.

Q. The franchises came from the people; that is true of all the companies so far as you know of?

A. As far as I know of.

Q. In 1858 what did you buy?

A. The whole franchise for the city of New York for the Metropolitan Gas Company.

Q. What did it include?

A. Rights that we could lay pipes anywhere in the city, for the whole Manhattan Island?

Q. Anything else?

A. Nothing.

Q. It was given by the people to somebody and was sold to their successors for a given sum?

9489 A. Yes, sir; that given sum was $144,000, in one place and in another place more; I do not know how that came.

Q. Take the $144,000—of whom did you buy that?

A. There were at that time three parties who were the main holders of it, and stock was issued, but the stock had hardly any value; nobody would buy it at any price.

Q. Then, stock had been issued upon a bare franchise?

A. Yes, sir, before I was connected with it.

Q. No real property was purchased before you went into it?

A. No.

Q. At the time you purchased something for $144,000, there was no real estate?

A. There was a lot at the corner of Forty-second street that was all, but not fully paid for.

Q. Was it a part of the $144,000, purchase?

A. No, sir; that is another thing.

Q. Then that which you purchased consisted simply of a right which had been gratituously given by the people, upon the consideration for which stock had been issued?

A. Yes, sir.

Q. There was no real estate, no personal property, and no expenditure so far as you know, as the basis of that capital stock; I mean previous to your purchase?

A. Negotiations were begun but not completed.

Q. Did they own any personal property?

A. They had the refusal of it; that is all; they had not bought it.

Q. They had not bought any personal property?

A. No.

Q. They had not bought any thing?

A. No, but they had expenses.

Q. You will pardon me for interfering: at the time that
9490 you made this $144,000 purchase, those of whom you got it had not purchased any thing?

A. No.

Q Property of any kind?

A. No, sir; they had not bought any thing, only transferred what they had begun.

Q. They had incurred some expenses?

A. Yes, sir.

Q. For what?

A. Organization, and I don't know what all; they claimed to have a good deal of stock and issued stock already.

Q. But upon the right that the people had gratuitously given them?

A. Yes, sir.

Q. In the schedules of appraisal heretofore submitted, I see there is a sub-division designated "Rights, Franchises, etc." What is meant by rights as distinguished from franchises?

A. I should say it was another expression for franchise; rights means every thing which is comprised in a franchise.

Q. Will you be kind enough to tell us what franchises your company had at the time of the consolidation, bearing in mind that I use the word franchise as you yourself have defined it? Now, what had you at that time?

A. We had a right under the ordinances of the city to lay mains, service pipes, and to furnish gas and collect those bills afterwards under the laws of the State of New York, and to conduct the business in a manner according to the rules; but every thing was guaranteed to us that we should not be interrupted.

Q. By whom?

A. By the city, provided we got the franchise from the State.

Q. Was any thing said as to its duration?
A. It was thirty years from 1859, I think.
Q. So that would expire in 1889?
A. Eighteen hundred and eighty-nine, yes, sir.
9491 Q. That was really all the right you had, or all the franchise you had, your company?
A. Yes, sir; ours was for the whole Manhattan island.
Q. Did you have a water franchise?
A. Yes, sir; a special grant, a special private dock.
Q. Isn't there a contest over that with the city?
A. For a part of it, but not for the whole. Our charter says that the whole front at Forty-third street belongs to us.
Q. There is a law suit about it?
A. Yes, sir.
Q. The city claims the same front?
A. Not the same front; ours is not in dispute.
Q. So far as you are in possession, there is no dispute?
A. No, sir; according to the lines of our property we go farther.
Q. The West Shore railroad couldn't have a right there unless it was granted by the city?
A. No, sir.
Q. Was there any grant given by the city for water rights for your company?
A. Yes, a private pier.
Q. Isn't it a fact that a part of the water right is disputed by the city?
A. The dock at 42d street; it is.

(By Senator MURPHY:)

Q. The city of New York gives the West Shore railroad a lease?
A. Yes, sir.
Q. You claim that that property comes under the old grant given you by the common council?
A. Yes, sir.
Q. My information is that your company claim under this right for a pier still more of the water right than is actually used by them for a pier, and that you are in possession, but the city authorities dispute it?
A. Yes, sir.
Q. And the dock department claim water rights in your immediate front?
9492 A. Not where we are now; we want to extend and they made some objection, and at the same time we had the whole in possession.
Q. You wanted it to extend further into the water?
A. Yes, sir.

(By Senator MURPHY:)

Q. You became possessed of this water front property before the establishment of the dock department?
A. Yes, sir, I think so.

Q. How long ago was it ceded to you?
A. In 1859 or 1860.

Senator MURPHY: The dock department has been created only since 1870.

Q. Did you pay the city any thing for that ordinance?
A. I do not know; I do not think so, but I am not certain.

(By Senator MURPHY:)

Q. Did you pay the city any rent for the use of that property after the ordinance was granted?
A. Never.
Q. You got it gratis?
A. We had property belonging to us and we built a dock.
Q. You got the property from the common council?
A. No, sir; only the water rights, the right to have a private dock.
Q. And it didn't cost you any thing?
A. I do not recollect.
Q. And you never paid any rent since?
A. No, sir.
Q. The right to collect bills is a right in common?
A. Like any body else, the same as any body who holds property.
Q. That right was not peculiarly to your company or any other company?
A. No, sir.
Q. In fixing the values of the rights and franchises so-called, as apportioned to your company, was the circumstance of your charter expiring in 1889 mentioned in the committee?
9493 A. I think they all knew it; I do no- know that there was particular mention made.
Q. No particular stress made of it?
A. No, sir, but they all knew it.

HENRY A. PERRY, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. What is your present residence?
A. Worth House, New York city.
Q. What has been your familiarity with the real estate in New York city and its valuation in past years?
A. I have been a deputy tax commissioner; putting values upon real estate.
Q. For how long?
A. From 1873 to 1882.
Q. During that period have you had occasion to acquaint yourself with the values of real estate in the city of New York so as to enable you, in your opinion, to form a judgment respecting the market value of lots in New York city?
A. Yes, sir.

Q. Have you examined plots of lots indicated in the schedule in evidence of the New York Gas-light Company?

A. Yes, sir.

Q. By those schedules it appears that exclusive of the mains and what of real estate by way of structures may be included under the term of plant, and of other structures exclusive of the bulk heads, piers and water rights, the so-called real estate of the New York Company has been valued at $1,607,000, for the purposes of my inquiry I assume that valuation to relate exclusively to the lots—the lands without any structures; and upon that hypothesis I would like to ask you what value you think was a fair market value in
9494 the fall of 1884, for the property designated on that schedule as "Block No. 1.?"

A. I assessed that at $290,000.

Q. How did you get at that?

A. Placing the valuation by taking in a number of lots, that is, between avenue A and avenue B, Twenty-first and Twenty-second streets, placing the value on the number of lots and the surroundings, allowing for the water front and its advantages, and by its market value in November, 1884, a very little allowance; I allowed more for corner lots averag*e*ring them $5,000 each, and $20,000 allowance for the water front; in bulk $290,000.

Q. I ask you the same question respecting "Block No. 2?"

A. I valued that at $325,000.

Q. For the purpose of informing the committee as to the basis of valuation, give the valuation you have placed upon some of the lots; by way of example?

A. Between avenue A and B, Twenty-first and Twenty-second streets, I allowed $5,000 each, with an allowance of $15,000 extra for water fronts; the inside lots I would value about $4,500, and the avenue lots about $6,000 each, and the corner $7,500; but I valued them all in bulk about $5,000 each, putting the regular *pro rata* upon them; just south of them in a better street, and a better locality and better lots, they were sold for $5,000 each.

Q. You know of the sales?

A. Yes, sir; in July, 1884.

Q. Block No. 3, what do you say about that?

A. Between Avenue A and First avenue, fifty lots—I valued those at $6,000 a lot—$300,000.

Q. What was block 2d, the valuation?

A. Three hundred and twenty-five thousand dollars.

Q. The third?

A. Three hundred thousand dollars, there were fifty lots; these valuations which are placed upon this property I allowed
9495 a little extra on account of their being such large plots.

Q. You gave different values to lots differently situated in the same block?

A. Yes, sir; whether single or in bulk.

Q. Block No. 4, what do you say to that?

A. Twenty-first to Twenty-second street, Avenue A to Avenue B, forty lots $240,000, the same reason.

Q. Block No. 5, what do you say to that, eight lots, Twentieth street?

A. I believe there is 175 feet; I make it seven lots, $42,000; what is called a lot is 25x100.

Q. The value of "Block No. 5," is $42,000?

A. Yes, sir; they assess them only at the rate of $6000; this is on the opposite side, they put a value of $7,000; they allow three feet of each lot.

Q. In view of the sales, you know that in that neighborhood you think the company's valuation on those schedules are excessive?

A. Yes, sir.

Q. What do you say about the bulkhead, pier or water rights; what is the usual method of estimating them—by the foot, excluding the pier?

A. Yes, sir; the work that is done to form the bulkheads, the sinking of cribs and piles, and filling in, from $120 to $125 per foot is very fair for a bulkhead.

Q. On that basis, what would you put as the value?

A. Sixty-five thousand dollars to $70,000; I believe the piers belong to the city; they are very valuable; they extend out to the foot of twentieth and to the foot of twenty-second, forty and fifty feet wide and run out some 400 feet.

Q. We do not ask the question concerning the value of the piers because it has already appeared in evidence that the construction of the piers was paid for by labor and material entering into other
9496 accounts; the question concerning this water front of the New York is limited to your appr-isal or estimate on 500 odd feet of water front in front of this particular real estate?

A. Yes, sir; say $125 a foot.

Q. Making about $65,000?

A. I should judge so.

Q. I do not ask you for the same reason to give any estimate of the value placed as appears upon this schedule marked "A. 3. J. I. G." opposite the item $33,505; I have not asked you about that?

A. No, sir, that comes under real estate; you have included the lot in my other values, all the land that they owned you have received a valuation for.

Q. There is a piece of real estate at the corner of Hester street and Elizabeth that is valued in this schedule at $100,000—what do you say as to that valuation?

A. I placed that at $85,000.

Q. We will take up the Manhattan next; refer-ing to the Manhattan, the first item on the schedule of the Manhattan property, the schedule being marked Exhibit "B. J. I. G," four lots of the block bounded by Tompkins and 14th street, Avenue D and 15th street, and numbered on the set of schedules and the plot to which they refer, as lots Nos. 1835, 1836, 1837 and 1838, and I will also ask you about four other lots on the same block, Nos. 1831, 1832, 1833, 1834, being eight lots facing on Tompkins street, what have you to say as to their value?

A. The corner lot of Tompkins, north side—north corner, $9,000;

three lots adjoining, $6,500 each; the three adjoining, $6,000, and on the corner $8,000. I place a little difference between 14th and 15th street lots.

Q. Making a total for those eight lots of how much?

9497 A. Fifty-four thousand five hundred dollars.

Q. We ask the same question now for the eight lots Nos. 1823, 1824, 1825, 1826, 1827, 1828, 1829 and 1830, being eight lots fronting on Tompkins street, between Fifteenth and Sixteenth streets?

A. Fifty-eight thousand dollars.

Q. How did you get at them?

A. In putting a value on the lots on Fifteenth and Sixteenth streets, I valued them at $8,000 for the corners, and $6,000 for the inside.

Q. The next plot I ask you about is a plot of nine lots, numbering 1806 to 1814, inclusive, on Avenue D, from Fifteenth to Sixteenth streets, in the same blocks?

A. Fifty-eight thousand dollars.

Q. The next question is the same and relates to lots Nos. 1797 to 1805, inclusive; No. "1" on block bounded by Fourteenth and Fifteenth streets on Avenue D, east side?

A. Sixty thousand five hundred dollars.

Q. The next plot is the same question, and relates to lots Nos. 1839 to 1844, inclusive, being six lots on Fourteenth street, in the same block?

A. Thirty-six thousand dollars, at $6,000 each.

Q. The next question relates to the four lots, Nos. 3102 to 3105, inclusive, in the same block, on Fifteenth street?

A. Eighteen thousand dollars, $4,500 each.

Q. The next question relates to eighteen lots on Avenue D, Nos. 1779 to 1796, inclusive, and between Sixteenth and Fifteenth and Fourteenth streets, on the west side, a plot of eighteen lots on the avenue?

A. Fourteenth street corner, $9,500; three adjoining lots, $7,000 each; the next four, $16,500 each; corner $8,500.

9498 Q. Total?

A. Sixty-four thousand five hundred dollars; I make a difference between the north corner and south corner on Fifteenth street.

Q. Why?

A. The south corner of Fifteenth street being nearer to Fourteenth street, and it being a little more valuable; on the north corner of Fifteenth street $8,000, and the seven adjoining lots, $6,000 each.

Q. What is the total of these eighteen lots?

A. One hundred and twenty-three thousand dollars.

Q. The next plot you are asked about is a plot of twenty lots Nos. 1845 to 1864, inclusive, north side between Avenue C and D?

A. One hundred and thirty thousand dollars; $6,500 each.

Q. Ten thousand dollars is an excessive value for those lots, is it not?

A. Yes, sir, very.

Q. The next plot to which your attention is called, is a plot of twenty lots, Nos. 3082 to 3101, inclusive, on the south side of Fifteenth street?

A. Five thousand dollars each; $100,000, total.

Q. The next plot is a plot of twenty lots on Fifteenth street, north side, Nos. 3108 to 3127, inclusive, what do you say about those values?

A. One hundred thousand dollars, $5,000 each.

Q. What do you say as to the next twenty lots, Nos. 3408 to 3427, inclusive, on Sixteenth street, south side?

A. The same—$100,000, $5,000 each.

Q. The next one is a plot of eighteen lots on the east side of Avenue C, Nos. 1681 to 1698, inclusive; that is to say lots 1681 to 1689, inclusive, on Avenue C, east side, between Fourteenth and Fifteenth streets, and also lots Nos. 1690 to 1698, inclusive on the same side of the same avenue between Fifteenth and Sixteenth streets, making eighteen lots on Avenue C, east side?

9499 A. On the northeast corner of Fourteenth street and Avenue C, the corner $10,500; three adjoining lots $8,000 each; the next four adjoining, $7,500 each; and corner $7,500; north corner of Fifteenth street, $9,500; the seven adjoining $7,000, each, and corner $9,500—total $142,500; between Fourteenth and Fifteenth streets, front $6,500 more in value than Fifteenth to Sixteenth streets on account of Fourteenth street.

Q. The next plot is a plot of nine lots on the west side of Avenue C and Nos. 1672 to 1680, inclusive, being lots between Fourteenth and Fifteenth streets on the west side of Avenue C?

A. Fourteenth street, $10,500, north-east corner; three adjoining lots, $8,000 each; four adjoining lots, $7,500 each; corner $9,500; this is appraised the same as the opposite side of the avenue.

Q. The total for those nine lots?

A. Seventy-four thousand and five hundred dollars.

Q. The next plot is a plot of thirteen lots, on Fourteenth street, north side, Nos. 1865 to 1877, inclusive?

A. I make it thirteen and four-fifths lots; I assessed it in bulk $7,000 each, $96,700; that includes that small piece.

Q. Exclude that; does that estimate in your last answer include a value for one lot adjoining 1877, and marked on the schedule "lot 1878"?

A. Yes, sir.

Q. What do you value lot in the rear of lot 1878, and No. 3068 on Fifteenth street, south side?

A. Four thousand and four hundred dollars.

Q. The next question relates to a plot of thirteen lots on Fifteenth street, south side, Nos. 3069 to 3081, inclusive?

A. Five thousand and five hundred dollars each, making $71,500.

Q. The next question relates to three lots on Fifteenth street, south side, Nos. 3048½ to 3053?

A. There is a gore.

Q. One nearly full lot and the gore?

A. I agree with them on the $12,000.

9500 Q. The next question is a plot of fourteen lots on Seventeenth street, north side, Nos. 3774 to 3787, inclusive?

A. Fourteen lots, $5,000 each; $70,000.

Q. Next is a plot of fourteen lots on Eighteenth street, south side, Nos. 4079 to 4992, inclusive?

A. Five thousand dollars each; $70,000.

Q. For those 227 or 228 city lots of which inquiry has just been made your total valuations as just given amount in all to what sum?

A. One million three hundred and seventy-nine thousand six hundred dollars; that is my estimate.

Q. The estimate on the schedule before and in evidence for those same lots appear to be $1,740,500. The next plot to which I call your attention is a plot of nine lots on the south side of Eighteenth street, Nos. 2058 to 2066?

A. Nine lots, $7,000 each, $63,000.

Q. Seven thousand five hundred dollars each is too high?

A. Yes, sir.

Q. The next is three lots on the south side of Eighteenth street, Nos. 2262 to 2264, inclusive?

A. Seven thousand dollars each, making in all $21,000.

Q. The next is twenty-four lots, north side of Sixteenth street, Nos. 1769 to 1746, inclusive?

A. Six thousand dollars each, $144,000.

Q. The next is twenty-four lots on the south side of Seventeenth street, Nos. 1770 to 1793, inclusive?

A. Twenty-four lots, $6,000 each, $144,000.

Q. The next is twenty-four lots on the north side of Seventeenth street, Nos. 2007 to 2030?

A. Twenty-four lots, $6,000 each, making $144,000.

Q. The next is a plot on the south side of Eighteenth street, twenty-four lots?

A. Six thousand dollars each, $144,000.

9501 Q. The next is a plot of seventeen lots, north side of Eighteenth street, Nos. 2274 to 2290, inclusive?

A. Seventeen lots, $6,000 each, $102,000.

Q. The next is a plot of twelve lots on the south side of Nineteenth street?

A. Six thousand dollars each, $72,000.

Q. The next is a plot of eleven lots on the north side of Nineteenth street?

A. Six thousand dollars each, $66,000.

Q. The next is eleven lots on the south side of Twentieth street?

A. Six thousand dollars, $66,000.

Q. The next is a plot of eight lots on the west side of Tenth avenue, Nos. 313 to 320, inclusive, being between Sixteenth and Seventeenth streets?

A. North-west corner of Sixteenth street and Tenth avenue, $10,000; six adjoining lots, $7,500 each, and the south corner $10,000; total $65,000.

Q. The next is a plot of nine lots on the west side of Tenth avenue,

Nos. 304 to 312, inclusive, being between Seventeenth and Eighteenth streets?

A. North-west corner of Seventeenth street and Tenth avenue, 8,500; four adjoining lots, $6,000, and three adjoining lots, $7,500 each, and the corner $10,000; those lots assessed at $7,500 each, were twenty-three lots making in all $75,000.

Q. The next is a plot of eight lots, Nos. 296 to 303, inclusive, on the west of Tenth avenue, being between Eighteenth and Nineteenth streets?

A. North-west corner of Eighteenth street, $10,000; six adjoining lots, $7,500 each; corner, $10,000; total, $65,000.

Q. The next is a plot of eight lots on the east side of Eleventh avenue, Nos. 161 to 168, inclusive?

A. The corners, $8,500 each; six inside lots, $6,500 each; total, $56,000.

9502 Q. The next is a plot of eight lots on the east side of Eleventh avenue, Nos. 169 to 176, inclusive, being between Seventeenth and Eighteenth streets?

A. Corners, $8,500 each; $6,500 inside lots; total, $56,000.

Q. The next is a plot of eight lots on the east side of Eleventh avenue, Nos. 185 to 192, inclusive, being between Nineteenth and Twentieth streets?

A. Corners, $8,500 each; six inside lots, $6,500 each; 56,000.

Q. The next is a plot of eight lots on the west side of Eleventh avenue, marked "1," between Thirteenth avenue and Eleventh avenue and Sixteenth and Seventeenth streets?

A. Forty thousand dollars; they put it at $50,000.

Q. The next is a plot of eight lots on the west side of Eleventh avenue, marked "9;" what have you to say to that?

A. One hundred thousand dollars; it is a very valuable piece, and it has four fronts.

Q. Of the 224 lots concerning which you have been questioned last immediately preceding this question the total valuation on this schedule before me and already in evidence and marked Exhibit "B. J. I. G." is footed up to $1,823,000, please state what is the total of your footings of the valuations of those 224 lots as last before given?

A. One million four hundred and sixty-five thousand dollars.

Q. What is the value in your estimation, of the office and dwelling at Irving Place and Fifteenth street, stated in this schedule to be valued at $175,000?

A. I will give you the amount of value only for the land; I have not valued the building.

Q. State the value of those lots separately?

A. The plot fifty-nine by ninety-two and fifty by eighty-four, $80,000.

9503 Q. The next is the Metropolitan; five lots situated on the north-east corner of Avenue A and Sixtieth street?

A. Twenty-two thousand dollars; I agree with them fully on that.

Q. Also for eight lots fronting Avenue A and the west side, between East Sixtieth and Sixty-first streets?

A. Corners, $7,000 each, and six inside lots, $5,500 each; total, $47,000.

Q. Also eight and one-half lots fronting on the north side of Sixtieth street, between First avenue and Avenue A, commencing 100 feet west of Avenue A?

A. Four thousand dollars each, total $34,000.

Q. Also eight and one-half lots fronting on the south side of Sixty-first street, between First street and Avenue A, commencing 100 feet west of Avenue A?

A. Four thousand dollars each, total $34,000.

Q. Also eight lots fronting on Avenue A, on the west side between East Sixty-second and Sixty-third streets?

A. Corners, $7,500 each, and six inside lots, $6,000 each, total, $51,000.

Q. Also thirteen and one-fourth lots fronting on the south side of Sixty-third street, and commencing 100 feet west of Avenue A?

A. Four thousand five hundred dollars each, total, $59,625.

Q. Also fifteen and one-fourth lots fronting on the north side of Sixty-second street, and commencing 100 feet west of Avenue A?

A. Four thousand dollars each, $61,000.

Q. Also eight lots fronting on Forty-first street on the north side, between Tenth and Eleventh avenues, commencing 100 feet east of Eleventh avenue?

A. Five thousand dollars each, $40,000.

Q. Also eight lots fronting Tenth avenue on the west side from the north-west corner of Sixty-fifth street to the south-west
9504 corner of Sixty-sixth street?

A. Corners, $8,000 each; six inside lots $6,000 each, $52,000.

Q. Also eight lots fronting Eleventh avenue on the east side, commencing at the northeast corner of Sixty-fifth street and extending to the southeast corner of Sixty-sixth street?

A. Corners, $6,500 each; inside $6,000 each—total, $43,000.

(Reference is here made to the ninth, tenth and eleventh questions following, and also to their answers.)

Q. Also twenty-four lots fronting on the north side of Sixty-fifth street, commencing 100 feet from Tenth avenue.

A. Four thousand dollars each, total $96,000.

Q. Also twenty-four lots fronting on the south side of Sixty-sixth street, commencing one hundred feet west of Tenth avenue?

A. Four thousand dollars each, total, $96,000.

Q. Also six inside lots fronting on the west side of Eleventh avenue between Forty-first and Forty-second streets?

A. Forty thousand five hundred dollars.

Q. Also one lot the north-west corner of Eleventh avenue and Forty-first street?

A. Eight thousand dollars.

Q. Also one lot the south-west corner of Eleventh avenue and Forty-second street?

A. Eleven thousand dollars.

Q. Also twenty-eight lots fronting on the north side of Forty-first

street between Eleventh and Twelfth avenues, commencing about one hundred feet west of Eleventh avenue?

A. Four thousand dollars, total, $112,000.

Q. Also the twenty-eight lots fronting on the south side of Forty-second street between Eleventh and Twelfth avenues, commencing about one hundred feet west of Eleventh avenue?

A. Seven thousand dollars, total, $196,000.

9505 Q. Also six lots fronting on the north side of Forty-second street between Eleventh and Twelfth avenues, commencing one hundred feet west of Eleventh avenue?

A. Seven thousand five hundred dollars each, $45,000.

Q. You think there is an error in the schedule here?

A. Yes, sir.

Q. What is here Forty-second street, should be Eleventh avenue?

A. Yes, sir.

Q. Also eight lots fronting on the west side of Eleventh avenue between Sixty-fifth and Sixty-sixth streets?

A. Corners, $6,500 each; inside lots $5,000 each, total $43,000.

Q. Also seventeen and seventy-five one hundredths lots having a frontage of 199 feet and nine inches on the north side of Sixty-fifth street, and 243 feet nine inches on the south side of Sixty-fifth street, between Eleventh avenue and the Hudson River railroad cut, commencing 100 feet west of Eleventh avenue?

A. That railroad cut down there is very bad. Seventeen lots, $60,000.

Q. The total values to which you have just testified of the lots as stated in the questions and answers, of the Metropolitan Company amount to what sum?

A. One million one hundred and forty-seven thousand one hundred and twenty-five dollars.

Q. The total by the schedule in evidence as it appears now before me, and from which the preceding questions were asked, appears to be $1,424,250 unless there be an error in the addition; this amount I find in pencil on the schedules; your amount seems to be less?

A. Yes, sir.

Q. You are satisfied that your values are according to the fair market price?

A. Yes, sir.

Q. Is there room for such difference of opinion as would be indicated upon the schedule before me and your figures?

A. I think not.

9506 Q. The property is of a character whose values are readily arrived at?

A. Yes, sir.

Q. With a degree of certainty?

A. Yes, sir.

(By the CHAIRMAN:)

Q. Also fifty-seven lots bounded by the west side of Twelfth avenue and the center line of Forty-first street and the west side of the former Thirteenth avenue at Third avenue and the centre line of

Forty-second street, with water rights and grants as to wharfage, cranage, etc.?

A. I have put no valuation upon those fifty-seven lots, because the boundary reads as follows:—Bounded by the west side of Twelfth avenue and the centre line of Forty-second street, and west side of the former Thirteenth avenue, and centre line of Forty-second street, with water rights and grants as to wharfage, cranage, etc.

Q. You mean you have not made an estimate?

A. Yes, sir.

Q. How far are those lots filled in?

—. About seventy feet east of Twelfth avenue.

Q. The balance of the lots extend under water, do they not?

A. Yes, sir.

Q. Out to the pier?

A. Yes, sir; they claim that they own even beyond the pier according to this map, but I am told that they wanted to build up and they would not be allowed to. There is a bulkhead line of fifty-seven lots established by the Dock Department of 1871, and the pier line extending into the water. I call your attention to the schedule of the Harlem real estate which has been submitted in evidence heretofore, and on which the value of lots owned by the Constituent Harlem Company is stated at $604,000, and ask you, without going into detail respecting the valuations of the different lots there specified, whether you looked at the property?

A. Yes, sir, each and every appraisal with the exception of
9507 the King's Bridge road plot that I am very familiar with.

Q. What have you to say as to the total value of all the plots that are valued at $604,000 on that schedule—what is your valuation?

A. Five hundred and two thousand five hundred dollars.

Q. How did you arrive at that $503,500?

A. By going over the ground and looking at the same.

Q. State the items of your valuation?

A. Well, first is eight lots on Avenue A, and eight on First Avenue, and nine lots on the north side of One Hundred and Tenth street, and seventeen lots on the south side of One Hundred and Eleventh street—total valuation $203,000. The First avenue lots you might say, $6,000, all told. The avenue fronts each $48,000; $4,500 each on First avenue, first with Pleasant avenue; seventeen lots on One Hundred and Tenth street, $3,000 each—total, $51,000; seventeen lots on south side of One Hundred and Eleventh street, $4,000 each—total, $68,000.

Q. What are the lots on One Hundred and Tenth street assessed at in the tax office?

A. Seven hundred dollars each which is about fifteen per cent. of the valuation put upon the same lots by the gas company.

Q. And on One Hundred and Eleventh street?

A. One thousand two hundred dollars each which is about twenty-five per cent. of the valuation placed by the gas company's expert.

Q. As a general rule, about what proportion to the market value, salable value, is the tax assessed value?

A. That should be sixty per cent.; I don't say they are, understand.

Q. When you say the assessed value for tax purposes of those lots is $700 to $1,200, do you allude to the year 1884 or thereabouts?

A. Yes, sir; I do.

9508 Q. Refer to the next plot that is stated on the schedules and give your valuations?

A. Six lots on First avenue and eight lots on the north side of One Hundred and Eleventh, and two on the south side of One Hundred and Twelfth, between Avenue A and First avenue, avenue lots $6,000 each, total $36,000; One Hundred and Eleventh street, lots $4,000 each, total $32,000; One Hundred and Twelfth street, two lots $4,000 each, total $8,000; all told, $76,000.

Q. Please refer to the next plots indicated on the schedule opposite the words "block 226 valued at $200,000," and give your valuations?

A. Eight lots west side of First avenue, $6,000 each, total $48,000; twelve lots north side of One Hundred and Tenth street, $4,000 each, total $54,000; fifteen lots south side of One Hundred and Eleventh street, $4,500 each, total $67,500; gore, $3,500, total $163,000.

Q. The next plot is a plot marked on the schedule "block 227" and valued at $53,000; what are your valuations?

A. Forty-five thousand five hundred dollars.

Q. The next plot, that is valued at $28,000; what is your valuation?

A. Fifteen thousand dollars.

Q. Why is there such a great discrepancy?

A. I cannot give theirs, my own is full value; I think it is assessed for less than $10,000, including a tank belonging to the company, a large tank up there; they put a value on the tank.

Q. It is real estate, because it is a structure, is it not?

A. Exactly; they assessed it less than $10,000.

Q. We will now inquire concerning the lots of the Municipal that appear to have been scheduled at a valuation of $889,900,

9509 and using the Exhibit marked "D J I C.," I would first call your attention to the plot described as block 225 in the twenty-second ward, bounded by Forty-fourth and Forty-sixth streets, Eleventh avenue and Hudson river, and which also included block "225 A. and block 226 A.;" you recognize the property?

A. Yes, sir.

Q. Have you seen it?

A. Yes, sir.

Q. Been on the ground?

A. Yes, sir; been on the ground.

Q. In the schedule I have just indicated, and opposite the items just read appear the figures with values of $1,083,000; what is your estimate of the values of the four plots just designated?

A. Five hundred and twenty-eight thousand two hundred dollars.

Q. In arriving at that valuation, did you include any structures of any kind whatever?

A. None.

Q. In arriving at that valuation what did you include?

A. All the land above and under water as described on the maps.

Q. You mean the maps in the schedule from which I have just read?

A. Yes, sir.

Q. Did you value the lots separately?

A. Each block by itself.

Q. Did you count the number of lots?

A. Yes, sir.

Q. Did you observe any discrepancy between the number of lots stated in the schedule from which I have just read, and the actual number of lots as shown by the map or by the property?

A. The total of the lots is the same, but they have fifty-four and three fourth lots on their schedule above water when it should read forty lots.

Q. Explain that?

A. If you will look on the map at block 226, and then compare it with a statement of block 226, the statement reading fifty-
9510 four and three-fourth lots, you will see there are but forty; if you will look at "226 A" map, and schedule "226 A" it reads forty lots instead of fifty-four and three-fourths; all with the exception of eight that face Twelfth avenue are under water.

Q. Being less valuable?

A. Very much; 75 per cent. less.

Q. The schedule reads 32 lots under water on block 226 A; there are in fact more under water, are there not?

A. Yes, sir.

Q. How many more?

A. Fourteen and three-fourths lots more.

Q. Under water?

A. Under water.

Q. Block No. 226 in the schedule reads 54¾ lots; how many are there according to the map?

A. Forty.

Q. How did you estimate the lots?

A. Twenty-five by one hundred.

Q. Block 225 reads 53 lots; that is 52, 25x100, and one lot 16x 100?

A. That is 52 2-3; that is correct.

Q. Block 225 A reads, 54¾ lots, eight above water and thirty-two under water?

A. That only accounts for forty.

Q. How many lots were there?

A. Fifty-four and three-fourths lots I allowed.

Q. Were there?

A. I suppose there were; when I came to look out in the water I take that as a guide; I went down to the tax office and they couldn't give me any information about that; I have examined the maps and could not get the exact number of the lots.

Q. Did you give your values assuming the number of the lots existed as stated in the schedule on that block?

A. Yes, sir; I did.

Q. Your values as just given include the values of lots under water?

A. Yes, sir.

9511 Q. What have you to say as to the method of estimating for marketable purposes, the value of such lots?

A. About twenty-five per cent. of the value of upland lots is very liberal.

Q. Does the fact that there is an adjoining lot under water add to the value of the lot that is exposed on land?

A. Certainly.

Q. When therefore you give the true value of the lot that is exposed on land does not such true value include some value for the adjoining lot under water?

A. Yes, sir.

Q. It must, must it not?

A. Certainly.

Q. Did you make the estimate to which you have just testified for the lands or lots out of water upon this basis?

A. Yes, sir; I made quite an allowance.

Q. What is a fair method of estimating the water rights adjoining this property of the Municipal, which you have just valued, if, in fact, there be any value in addition to the value of the lots as you have just given them?

A. I would place it about $100 to the foot.

Q. How many feet front was there in this property?

A. About 520 feet.

Q. That would be about $52,000?

A. Say $65,000.

Q. Now I observe in this schedule an item of 517 feet of bulkhead, valued at $52,500; isn't the value of that bulkhead, in your opinion, fairly included within the value of the lots exposed and out of water which you have already given?

A. No, sir; that is not in my estimate of $1,000 for lots under water.

Q. The estimate which you have just given includes an estimate for lots under water at what figure?

A. One thousand dollars each.

Q. And lots above water exposed at what figure?

A. Four thousand dollars each.

9512 Q. Are such lots as those designated capable of being accurately valued for marketable purposes?

A. Yes, sir.

Q. Do you know of sales in accordance with the values you have given?

A. I found some offers at my figures; they are valued at the price I have placed values on now; I call your attention now to the schedule marked "E. J. I. G." being the schedule of properties of the Knickerbocker Company, which by the books of the Consolidated Company appear to have been valued at $480,000, for their real estate and by this schedule the lots of which inquiry is about to be made of you appear to be valued at $550,000?

A. Yes, sir; that is their estimate.

Q. Have you examined the lots against which that estimate appears in these schedules, which are located in the Twelfth ward, between Ninety-eighth and Ninety-ninth streets, Second avenue and Harlem river?

A. Yes, sir; I have.

Q. What have you to say in respect to the fair values of those lots?

A. Three hundred and sixty thousand dollars, I make them.

Q. Does that include lots under water?

A. No, sir.

Q. Why not?

A. There are no lots under water.

Q. How do you arrive at your item?

A. I valued the lots between First and Second avenues, 201x650 feet in all, fifty-two lots, at $4,500 a lot, total $234,000; the other block from the Harlem river to First avenue, thirty-six lots, at $35,000 a lot, total $126,000; all told $360,000.

Q. Are those lots capable of being valued with any great degree of accuracy?

A. Yes, sir; from sales that have been made surrounding and what they are now valued at.

9513 Q. If there be any water rights in addition to the values just stated by you for that block fronting on the Harlem river between Ninety-eighth and Ninety-ninth streets, what are they?

A. Twenty-five thousand dollars to $30,000; $125 a foot.

Q. Twenty-five thousand dollars to $30,000 is sufficient to cover what?

A. The bulkhead.

Q. Do I understand you have made a personal examination at the request of the chairman of the committee of property surrounding that which you have just testified?

A. Yes, sir.

Q. In doing so it occupied a very considerable time, did it not?

A. Yes, sir.

Q. These values you have testified to are not such values as in the discharge of your duties if you was an official to assess for taxable properties that you would assess these lands at?

A. Certainly not; these are market values.

Q. The assessed values, I understand you would be about sixty per cent. of the market value?

A. Yes, sir; sixty per cent. of my values.

(By the CHAIRMAN:)

Q. Are these lots so situated including their surroundings that they are capable of being valued with a great degree of accuracy?

A. Yes, sir, very readily.

Q. For the most part, they have a recognized market value?

A. Yes, sir.

Q. Which you have stated?

A. Yes, sir.

MICHAEL COLEMAN, a witness called by the counsel to the committee, being duly sworn, testified as follows:

Examined by Mr. TREMAIN:

Q. You are holding what position?
A. Commissioner of taxes.
Q. Do you know Mr. Perry, the last witness?
A. Yes, sir.

9514 Q. What do you know about Mr. Perry's familiarity with real estate values and ability to judge of their market value?

A. Well, he was a clerk in our department for several years and was promoted as deputy; he has had experience in the tenement districts as to the value of lots in those districts and also he has had some experience in the valuing of water fronts on account of the position he had as deputy in the Twelfth ward, and of property adjoining the water front.

Q. Should you consider him a fair expert and competent to estimate the values of lots located in the following described portions of the city of New York, viz: in Fourteenth, Sixteenth and Twenty-second in the twelfth and nineteen- wards?

A. I should consider him rather a competent man to value property generally speaking, without there is some exceptional considerations that ought to be taken out of the line of ordinary property.

Q. Mr. Perry has been asked concerning the values of lots on which various gas properties in the city are located along the east side of the city near Fourteenth, Twenty-third and Ninety-ninth streets and also on the west side of the city in Forty-second, Sixty-fifth and Fourteenth streets taking several plots at each location I have named?

A. I should say that he was competent without as I said there was some extraordinary points that perhaps might be considered by an expert in values taking in some considerations that a competent ordinary man would not really know, unless he was experienced in regard to water fronts, or from whatever the cause might be.

Q. Excluding the costs of water fronts and the costs of their improvements, is there any other qualification you would fix to your answer?

A. No, sir.

9515 Q. My question, of course, relates exclusively to vacant lots?

A. Yes, sir.

Q. I speak of the valuation of lots apart from any structures upon them?

A. That is the way I understand it.

Q. Are you familiar with the properties I have indicated in these questions?

A. Not any more so than I am, generally speaking, throughout the city.

Q. Are you familiar with the values of real estate throughout the city?

A. Yes, sir.

Q. State your degree of familiarity and from what source it is derived?

A. From the experience I have had in the past twenty years in buying and selling, examining and estimating the market values of property on complaint of citizens, generally speaking, who have filed their objections in the tax department since 1868.

Q. As a matter of administration or fact, is there not usually a difference between the assessed value of city lots for taxable purposes and their actual selling value in the market?

A. We generally try to get below the market value.

Q. About how much is the market value above?

A. Throughout the city we are on a basis now of about seventy-eight per cent. but of course there are exceptions in all locations.

Q. There has been considerable testimony delivered this afternoon as to the value of a large number of pieces of property, and without asking you to go over all those values, I will by way of illustration, so as to see whether the testimony is in all respects or in some respects in accord with your judgment; I will inquire of you in one or two instances, calling your attention to the block between Forty-first and Forty-second streets and Eleventh and Twelfth avenues, twenty-eight lots on one side on Forty-
9516 second street and twenty-eight lots on Forty-first street, I would like to ask you whether you think $7,000 a lot for the twenty-eight lots on Forty-second street is not a fair and full value?

A. It is a fair value for all ordinary purposes, taking one lot at a time.

Q. Suppose you take twenty-eight lots?

A. You would have to add on a percentage there for connection, it is a very hard matter in New York for parties seeking large plots in that neighborhood and up to Ninetieth street to get twenty-five to thirty lots without paying a percentage over ordinary selling value; $7,000 is as fair a value as any expert could put on one or two lots; but if you could value that, you would have to add on a percentage.

Q. What would you value the entire block at?

A. It is a third rate tenement street or else a factory neighborhood and do you want me to take in these Eleventh avenue fronts?

Q. Yes, sir.

A. Well, as a plot that property would perhaps sell at $390,000; that is add on a percentage for the collections, but separately it would not sell for that price.

Q. From Twentieth to Twenty-second street and from the river to Second avenue; give us an idea of the valuation of the lots?

A. All my answers are for ordinary use; they would run along there for ordinary use in the neighborhood of $5,000.

Q. What do you say about the value of lots between Eleventh and Twelfth avenues and Forty-fourth and Forty-fifth streets?

A. Single lots there perhaps about $4,500.

Q. Worth any more on the avenue than on the side streets?

A. Yes; all avenue lots are worth more; that is the future for business; corners are worth a great deal more in proportion
9517 in tenement neighborhoods than in private neighborhoods.

Q. How do you assess the lots under water, how would you value them at their market value?

A. That is altogether owing to the foundation of river bed, the depth of water, the cost of cribbing out, the cost of filling in, the difficulty of getting the filling, and the current; there are many elements to be taken into consideration.

Q. What do you think would be a fair value?

A. That would be owing to the surroundings.

Q. Between Forty-fourth and Forty-fifth streets for water lots what relation to the upland values would those lots have?

A. It is a very difficult question to answer.

Q. For purposes of assessment what proportion of value is given to such lots under water in proportion to upland lots?

A. We place but small assessments, for the reason they are no expense to the city, and it is a difficult matter to find what will be the necessary cost of filling out and improving them to make them in such a condition as to make them marketable.

Q. If you put a valuation, say of about $4,000, on an exposed lot, about what would you put the valuation of a lot under water adjoining it?

A. It would be a difficult matter for any one to understand, the difficulty of putting values in proportion to upland lots without knowing the location exactly.

Q. At the foot of Forty-fourth and Forty-fifth streets?

A. It would be a difficult matter; I don't know the soundings.

Q. What are they worth, ordinarily speaking, in the market?

A. It is all a matter of what they would be used for.

Q. Would you not say that twenty-five per cent., in comparison with the upland value at that point, would be fair?

A. Very liberal.

9518 Q. Without making any very close examination, can you state about what the value of lots is between First and Second avenues, Ninety-eighth and Ninety-ninth streets?

A. That is all filled in around there, and I should judge they would run for street lots about $3,500; avenue lots, inside, $4,500; and the corners thirty per cent. added on to inside avenue lots. No single lot in that block would hardly be built on without an extra addition of cost on account of its value.

Q. Consequently the values you would put would be too high for a single lot?

A. Yes, sir; no one could afford to buy single lots; in that location it would be necessary for a purchaser to take several lots at once.

Q. Would you not think that taking that block, then, and averaging all the lots at $4,000, or $4,500, would be a very liberal value?

A. Very; of course I am answering in regard to ordinary use.

Q. Would there be any serious difference in the values of the block

east of the block just mentioned, viz., between Ninety-eighth and Ninety-ninth streets and east of First avenue?

A. No, there would not be any.

Q. In the last questions that I have asked you concerning these two blocks, I have come within the values as testified to by Mr. Perry—I think considerably within—assuming I have come within, do you see any method by which those values could be made more accurate for that particular plot?

A. No, I do not.

Q. Or for any plots I have mentioned to you?

A. No, I do not; in the ordinary way of speaking about values of upland properties, those locations; but you must remember that in placing values upon large plots, upon river fronts, that what parties pay for them and what parties ask for them some-
9519 times are not the ordinary values but extraordinary values; the manner in which they are purchased and the use made of them after they are purchased, all those are elements that ought to go in when you are speaking of large plots.

Q. Well, if property is in use for gas making purposes, and it is to be valued on account of a disuse of those purposes or for a continuance of the use of the same purposes, would either of those circumstances argue to increase the value, the salable value, the marketable value of those lots, above what an ordinary expert seeing them in their present use would place upon them?

A. Oh, very much indeed.

Q. Well, how?

A. Gas corporations in New York have selected locations to suit their particular kind of business; their plant is there, their mains are all connected; and privileges of their water-fronts which are special privileges in New York because we have only so much water-front here, and if they were altered to suit their purpose, would have far greater values. If for ordinary purposes or a disuse of property, then Mr. Perry's estimate of value I should consider as good as you could get, with the exception of what I say in regard to the mechanical improvements that ought to be made on bulkheads or the extension of bulkheads.

Q. Mr. Perry has not been asked about that; is there any other way, in your opinion, of arriving at the fair value of any of the plots of ground to which I have called your attention, except to send a competent expert acquainted with the values of the lots, and procure his estimate of appraisal of those lots?

A. Not as single lots.

Q. Is there, in your opinion, any other fair method of obtaining a fair aggregate value of any plot of lots of less than a
9520 block, or if a block except by sending a competent expert to appraise the lots?

A. Now, you are talking of it as a whole?

Q. As a plot of lots or part of a block say?

A. Not by taking one single lot, or part of blocks, one with another; there is no other way.

Q. Supposing you want to get at the fair value of a piece of property, including real estates and structures upon it, and the fixtures, and a distinction is made between the value of the ground and what is upon it. The fair way is to ascertain the value of the ground, as ground is one element in the total of valuation?

A. Yes, sir; that is the foundation of values, of course.

Q. And the values which Mr. Perry has put upon these grounds seems fair to that extent?

A. Yes, sir.

Q. And then you go on and get the value of the plant, if there is one, and add that to it?

A. Yes, sir; but there is a connecting element that ought to be taken into consideration. The plant that has been put upon those grounds, if it is a prosperous plant, that element enters into its value together with the location, and should certainly be taken into account, and in getting at the value, you should have both together.

Q. You have got to get at the value of the land as one element?

A. Yes, sir.

Q. Mr. Perry has done that fairly, as far as you can see?

A. Yes, sir.

Q. If there is any thing in your testimony that you have not clearly explained, please do so?

A. My testimony is in regard to land in its natural state, and vacant with the improvements of streets surrounding it, the naked land.

Q. When you are getting at the value of land as land, we have it as far as you can see, and Mr. Perry has done it intelligently and fairly?

A. I should judge so, as far as I can see.

9521 APPENDIX K.

COMPARISON OF

Chapter 960, Laws of 1867.	Chapter 367, Laws of 1884.
An act to authorize the consolidation of *corporations organized under the law of February* 17, 1848.	An act to authorize the consolidation of *manufacturing corporations.*
§ 1. Any two or more corporations heretofore organized *under the law of* 1848, *may consolidate as follows:*	Any two or more corporations heretofore *or hereafter* organized *under any general or special law may consolidate as follows:*
The *trustees* shall meet and agree upon details as to name, location, trustees, capital stock (*which shall not be larger in amount than the aggregate amount of capital of the consolidating companies*), number of shares and other details, *not inconsistent with the laws of February* 17, 1848.	The *boards of directors* shall meet and agree upon details as to name, location, trustees, capital stock (*which capital shall not be larger in amount than the fair aggregate value of the property, franchises and rights of the consolidating companies*), number of shares, *term of existence* (*not over fifty years*), and other details. (Last clause, law of 1867, omitted in law of 1884, but see § 4).
§ 2. The agreement of the directors shall become that of the corporations only on the assent of two-thirds of the shares of stock of each company at a meeting duly called and advertised.	Same.
Any stockholder who dissents at this meeting or within twenty days may, or the company may, apply to the Supreme Court for the appointment of appraisers to hear and determine the value of such stockholder's shares.	Same, but the application to the Supreme Court must be *within sixty days after such dissent.*
Upon valuation of such shares, and payment of the amount appraised to the stockholder, the new corporation becomes owner of such shares.	Same.
§ 3. When duplicates of the agreements and verified copies of the proceedings of the stockholders' meetings shall be filed with the county clerk and the secre-	Same.

tary of State, the corporations shall be merged in the new corporation, and the details of such agreement shall be carried into effect. *But such new corporation shall have no larger powers than are granted by the law of February* 17, 1848.	(This sentence, law of 1867, omitted in law of 1884, but see § 4.)
§ 4. New corporation shall possess general powers and restrictions under 1 R. S., title 3, chap. 18, and under law of February 17, 1848.	Same.
§ 5. All rights, franchises and property of old corporations shall belong to the new.	Same.
§ 6. Rights of creditors protected.	Same.
§ 7. New corporation limited to the transaction of *one kind of business authorized by the law of* 1848.	New corporation allowed to carry on *any business authorized to the consolidating corporations or either of them.*
§ 8. This act shall take effect immediately.	Same.

FORM OF REPORT FOR GAS COMPANIES IN USE IN LONDON.

The following is the form of the report provided by law, made for the first half year of the year 1885, for the Gas-light and Coke Company of London, exhibiting the method of stating for public information and for official use the details of capital, dividends, receipts, payments, supplies, materials, cost of manufacture, cost of gas, quantities manufactured, amount of sales, appreciation, depreciation, expenses, and general revenues, and all the general business of the company for one half year.

The capital of this company represents the equivalent of about $54,000,000. It sells gas at a maximum price of seventy-two cents per thousand cubic feet; it pays dividends varying upon different classes of shares, from five per cent. to ten per cent. per annum, and manufactures 8,479,915,000 cubic feet of gas in six months. (See committee's report pages .)

REPORT.

TO BE SUBMITTED TO THE PROPRIETORS AT THE ONE HUNDRED AND FORTY-SEVENTH HALF-YEARLY ORDINARY GENERAL MEETING TO BE HELD ON THE 7TH AUGUST, 1885.

The Directors submit herewith the accounts for the half-year which ended on the 30th of June last. They show receipts amounting to £1,542,586 1s. 2d., and outgoings (including provision for all fixed and preferential charges) amounting to £1,217,016 9s. 9d. The balance of £325,569 11s. 5d., added to the surplus profit, brought forward from the last account, amounts to £517,764
9523 16s. 4d., out of which the Directors recommended a dividend on the ordinary stock at the rate of 12 per cent. per annum.

The sale of gas continues to increase satisfactorily; and the wear and tear account, while every regard has been paid to the maintenance of efficiency, is again reduced. The cost of coal compares favorably with its cost in the corresponding period of last year, but the prices of tar and ammoniacal liquor and their products continue much depressed. There are, however, the Directors are happy to say, indications of improvement in some classes of this branch of their trade.

Parish rates and taxes, which show a still further increase, prove every year more onerous. In view of the growth of parochial expenses, and of the quinquennial reassessment now being made, the Directors have little hope of any diminution of these most serious charges upon the company.

The capital account, it will be observed, has been slightly reduced by the amount received for superfluous land which has been sold.

The application of the Vestry of the Parish of Kensington for a reversal of the judgment of the Court of Queen's Bench in the Steam Roller case has been heard. The Lord Justices of the Court of Appeal unanimously upheld the judgment of the Lower Court in favor of the company on every point raised.

WILLIAM THOMAS MAKINS,
Governor.

HORSEFERRY ROAD, WESTMINSTER, S. W., *24th July*, 1885.

9524 CONSTRUCTION AND CARBONIZING DEPARTMENT.

I hereby certify that the whole of the company's manufacturing and other stations under my charge have been maintained, and are now in good working order.

(Signed) G. C. TREWBY,
Constructing and Carbonizing Engineer-in-Chief.

HORSEFERRY ROAD, WESTMINSTER, S. W., *22d July*, 1885.

DISTRIBUTION DEPARTMENT.

I hereby certify that the whole of the distribution plant is in good order, and in a thoroughly efficient state of repair.

(Signed) ROBERT HARRIS,
Distributing Engineer.

146 GOSWELL ROAD, E. C., 22*d July*, 1885.

PRODUCTS DEPARTMENT.

I hereby certify that the whole of the plant, engines, boilers, stills, trucks, machinery and tools in connection with the company's products works under my charge have, during the past half-year, been maintained in good working order and repair.

(Signed) THOS. WILTON,
Superintendent of Products Works.

BECKTON, 24*th July*, 1885.

No. 1—*Statement of stock and share capital on the 30th June*, 1885.

Acts of Parliament relating to the raising of capital.	Description of capital.	Standard dividend. Per cent.	Total paid up.	Remaining to be called up and unissued.	Total amount of existing capital powers.	Amount cancelled.	Total amount originally authorized by acts.
The Gas-Light and Coke Company's act, 1868	A. ordinary stock	10	£1,545,330 0 0				
	A. preference convertible stock, 1st issue	5	1,170 0,0				
	A. preference convertible stock, 2nd issue	5	930 0 0	.....	£1,550,000 0 0	.....	£1,550,000 0 0
	A. preference convertible stock, 3rd issue	5	2,510 0 0				
The Gas-light and Coke Company's act, 1872	A. ordinary stock	10	987,410 0 0				
	A. preference stock, 4th issue	5	7,970 0 0	.....	1,000,000 0 0	.....	1,000,000 0 0
	A. preference stock, 5th issue	5	4,620 0 0				
The Victoria Docks Gas act, 1857	A. ordinary stock	10	100,000 0 0	.....	100,000 0 0	.....	100,000 0 0
The City of London Gas Company's act, 1850	A. ordinary stock	10	300,000 0 0	.....	400,000 0 0	.....	400,000 0 0
	B. stock	*4	100,000 0 0				
The companies act, 1862, as applied to the Western Gas-light Company, limited	A. ordinary stock	10	600,000 0 0	.....	600,000 0 0	.....	600,000 0 0
The Imperial Gas act, 1854	A. ordinary stock	10	1,560,000 0 0	.....	1,560,000 0 0	.....	1,560,000 0 0
The Great Central Gas Consumers' act, 1851	C. preference stock	10	200,000 0 0	.....	200,000 0 0	.....	200,000 0 0
The Equitable Gas-light Company's act, 1842	D. preference stock	10	300,000 0 0	.....	300,000 0 0	.....	300,000 0 0
The Independent Gas-light and Coke Company act, 1864	E. preference stock	10	165,000 0 0				
	F. preference stock	5	30,000 0 0	.....	255,000 0 0	.....	255,000 0 0
	G. preference stock	7½	60,000 0 0				
The Imperial Gas act, 1866	H. stock	*7	325,000 0 0	.....	325,000 0 0	.....	325,000 0 0
The Imperial Gas act, 1869	H. stock	*7	975,000 0 0	.....	975,000 0 0	.....	975,000 0 0
The London Gas-light act, 1852	J. preference stock	10	997,000 0 0	.....			
	Prefer'ce stock or shares.	6	.....	£150,000 0 0	547,100 0 0	£2,000 0 0	550,000 0 0
The London Gas-light act, 1857	Prefer'ce stock or shares.	6	.....	26,542 12 6	26,542 12 6	8,368 12 6	34,951 5 0
The London Gas-light act, 1860	J. preference stock	10	69,438 0 0	.....			
	Prefer'ce stock or shares.	6	.....	300,000 0 0	369,438 0 0	.....	369,438 0 0
The Gas-light and Coke Company act, 1876	A. ordinary stock	10	375,000 0 0	.....			
	Ordinary stock or shares.	10	.....	625,000 0 0	1,000,000 0 0	.....	1,000,000 0 0
			£8,106,538 0 0	£1,101,542 12 6	£9,208,080 12 6	£11,298 12 6	£9,219,369 5 0

* Maximum dividends subject to fall only.

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No. 2—*Statement of loan capital on the 30th June, 1885.*

Acts of Parliament authorising the loan capital.	Description of loan.	Amount borrowed. Four per ct.	Four and a qu'rter per ct.	Four and a half per ct.	Six per ct.
The Gas-light and Coke Company's act, 1868	Debenture	.....	£300,000 0 0	.....	.....
	Debenture stock	£80,000 0 0	50,000 0 0	£32,500 0 0	.....
The Gas-light and Coke Company's act, 1872	Debenture stock.	250,000 0 0	.....	.....	.....
The Victoria Docks Gas act, 1857	Debenture	1,000 0 0	.....	.....	.....
	Debenture stock	24,000 0 0	.....	.....	.....
The City of London Gas Company's act, 1859	Debenture stock.	38,950 0 0	.....	21,050 0 0	.....
The Companies act, 1862, as applied to the Western Gas-light Company, limited	Debenture stock	.....	.....	200,000 0 0	.....
The Imperial Gas act, 1854	Bonds*	.....	.....	.....	.....
	Debenture	6,000 0 0	.....	.....	.....
	Debenture stock	37,000 0 0	.....	.....	.....
The Great Central Gas Consumers' act, 1851	Debenture stock.	54,200 0 0	.....	11,800 0 0	.....
The Imperial Gas act, 1860	Debenture stock.	81,250 0 0	.....	.....	.....
The Imperial Gas act, 1869	Debenture	60,000 0 0	.....	.....	.....
	Debenture stock	183,750 0 0	.....	.....	.....
The London Gas-light act, 1852	Debenture stock	12,185 0 0	.....	.....	.....
	.....	.....	.....	.....	.....
The London Gas-light act, 1866	Debenture stock.	.....	.....	80,562 0 0	.....
The Gas-light and Coke Company act, 1876	Debenture stock	300,000 0 0	.....	.....	£475,020 4 2
	.....	.....	.....	.....	.....
		£1,128,335 0 0	£350,000 0 0	£296,912 0 0	£475,020 4 2

* Bonds for capitalised profits.

9526 9559 2536

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No. 2—(Continued).

Acts of Parliament authorizing the loan capital.	Amount borrowed. Ten per cent.	Amount borrowed. Total.	Amount remaining to be borrowed.	Total amount of existing borrowing powers.	Amount cancelled	Total amount originally authorized.
The Gas-light and Coke Company's act, 1868	.....	£462,500 0 0	.....	£462,500 0 0	.....	£462,500 0 0
The Gas-light and Coke Company's act, 1872	.....	250,000 0 0	.....	250,000 0 0	.....	250,000 0 0
The Victoria Docks Gas act, 1857	.....	25,000 0 0	.....	25,000 0 0	.....	25,000 0 0
The City of London Gas Company's act, 1859	.....	60,000 0 0	.....	60,000 0 0	.....	60,000 0 0
The Companies act, 1862, as applied to the Western Gas-light Company, limited	.....	200,000 0 0	.....	200,000 0 0	.....	200,000 0 0
The Imperial Gas act, 1854	£130,000 0 0	173,000 0 0	.....	173,000 0 0	.....	173,000 0 0
The Great Central Gas Consumers' act, 1851	.....	66,000 0 0	.....	66,000 0 0	.....	66,000 0 0
The Imperial Gas act, 1866	.....	81,250 0 0	.....	81,250 0 0	.....	81,250 0 0
The Imperial Gas act, 1869	....	243,750 0 0	.....	243,750 0 0	.....	243,750 0 0
The London Gas-light act, 1852	....	12,185 0 0	..... £66,282 10 0	78,467 10 0	£13,200 0 0	91,667 10 0
The London Gas-light act, 1866	.....	30,562 0 0	.....	30,562 0 0	.....	30,562 0 0
The Gas-light and Coke Company act, 1876	....	775,020 4 2	..... 224,979 15 10	1,000,000 0 0	.....	1,000,000 0 0
	£130,000 0 0	£2,379,267 4 2	£291,262 5 10	£2,670,529 10 0	£13,200 0 0	£2,683,729 10 0

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No. 3—*Capital account for the half year ending 30th June*, 1885.

		Amount expended this half year.	Total expenditure to 30th June, 1885.
Dr.			
To expenditure to 31st December, 1884		.....	£10,303,814 3 0
To expenditure during the half year to 30th June, 1885, viz.:			
New and additional mains and service pipes		£5,418 9 10	
New and additional meters and fittings		331 0 5	
			5,749 10 3
			£10,309,563 10 3
Cr.			
By refund of deposit on land purchase	11 8 6		
By sale of surplus land	19,170 7 7		
By depreciation of plant	14,686 2 9		
By depreciation of meters	7,145 1 6		
			41,013 0 4
			£10,268,550 12 11
To balance of capital account			520,839 8 10
			£10,789,390 1 9

	Amount received to 31st December, 1884.	Amount received this half year.	Total receipts 30th June, 1885.
Cr.			
By A. Ordinary stock	£5,442,620 0 0	£25,000 0 0	£5,467,800 0 0
By A. 5 per cent. pref. convert. stock, 1st issue	1,170 0 0		1,170 0 0
By A. 5 per cent. pref. convert. stock, 2nd issue a	1,070 0 0		930 0 0
By A. 5 per cent. pref. convert. stock, 3rd issue a	2,350 0 0		2,510 0 0
By A. 5 per cent. preference stock, 4th issue	7,970 0 0	.....	7,970 0 0
By A. 5 per cent. preference stock, 5th issue	4,020 0 0	.....	4,020 0 0
By B. 4 per cent. max. stock	100,000 0 0	.....	100,000 0 0
By C. 10 per cent. pref. stock	200,000 0 0	.....	200,000 0 0
By D. 10 per cent. pref. stock	300,000 0 0	.....	300,000 0 0
By E. 10 per cent. pref. stock	165,000 0 0	.....	165,000 0 0
By F. 5 per cent. pref. stock	30,000 0 0	.....	30,000 0 0
By G. 7½ per cent. pref. stock	60,000 0 0	.....	60,000 0 0
By H. 7 per cent. max. stock	1,300,000 0 0	.....	1,300,000 0 0
By J. 10 per cent. pref. stock	466,538 0 0	.....	466,538 0 0
By 4 per cent. deb. stock	1,061,335 0 0	.....	1,061,335 0 0
By 4¼ per cent. deb. stock	50,000 0 0	.....	50,000 0 0
By 4½ per cent. deb. stock	295,912 0 0	.....	295,912 0 0
By 6 per cent. deb. stock	475,020 4 2	.....	475,020 4 2
By debentures	367,000 0 0	.....	367,000 0 0
By bonds for capitalized profits.	130,000 0 0	.....	130,000 0 0
	£10,460,805 4 2	£25,000 0 0	£10,485,805 4 2
By premium capital—ordinary stock	271,311 8 7	31,261 0 3	302,572 8 10
Debenture stock	1,012 8 9	.....	1,012 8 9
	£10,733,129 1 6	£56,261 0 3	£10,789,390 1 9

a £180 of these issues has been converted into ordinary stock during the half year.

No. 4—*Revenue account for the half year ending 30th June*, 1885.

June half year, 1884.	Dr.			
	To manufacture of gas:			
£554,730	Coals, including dues, carriage, unloading and trimming (see account No. 10)	£542,157 7 5		
10,079	Salaries of engineers and other officers at works	9,333 1 6		
107,015	Wages (carbonizing)	110,494 6 2		
23,717	Purification, including £13,046 14s 8d for labor	23,067 19 4		
150,080	Repair and maintenance of works and plant, materials and labor, less received for old materials, £1,121 6s 2d	138,160 18 11		
			£824,122 13 4	
	To distribution of gas:			
24,656	Salaries and wages of officers (including rental clerks)	£25,242 2 2		
35,811	Repair and maintenance of mains and service pipes	37,748 17 1		
22,184	Repair and renewals of meters and fittings	22,461 8 6		
			85,452 7 9	
	To public lamps:			
14,604	Lighting and repairing	£15,096 10 8		
160	Experimental street lighting	223 16 1		
			15,320 6 9	
	To rents, rates and taxes:			
3,437	Rents payable	£3,686 12 4		
58,223	Rates and taxes	64,884 10 7		
			68,481 2 11	
	To management:			
2,750	Directors' allowance	£2,750 0 0		
200	Company's auditors	200 0 0		
6,815	Salaries of secretary, accountant and clerks	6,871 3 2		
13,578	Collectors' commission	13,671 2 3		
4,392	Stationery and printing	3,303 18 5		
2,329	General charges	2,377 0 6		
			29,173 4 4	
.....	To parliamentary charges	.....	102 0 0	
4,602	To law charges	.....	3,739 17 0	
8,459	To bad debts	.....	8,074 6 0	
750	To depreciation fund for works on lease hold land	.....	750 0 0	
10,681	To retiring allowances under amalgamation schemes and annuities	.....	12,289 1 6	
	To public officers:			
855	Gas referees and official auditor	£873 8 3		
546	Public testing stations	1,024 4 3		
			1,897 12 6	
£1,000,932			£1,049,402 12 1	
491,712	Bal. carried to net revenue acct. No. 5.	.....	493,183 9 1	
£1,552,644			£1,542,586 1 2	

No. 4—(Continued).

	Cr.				
	By sale of gas:				
	Common gas, per meter, at 3s and 2s 8d				
£1,038,418	per 1,000 cubic feet	£1,076,363	13	1	
	Cannel gas, per meter, at 3s 9d per 1,000				
53,048	cubic feet	54,419	14	7	
	Public lighting and under contracts:				
67,270	Common gas	65,616	12	0	
2,923	Cannel gas	2,790	12	6	
					£1,199,190 12 2
£1,161,656					
	(See statement No. 12.)				
23,795	By rental of meters	.....			24,334 10 0
	By residual products:				
188,499	Coke, less £29,195 17s 7d for labor, etc..	£189,264	4	1	
5,863	Breeze, less £1,703 14s 1d for labor, etc..	8,809	3	8	
89,523	Tar and tar products	49,718	16	6	
79,135	Ammon. liquor and sulphate of ammonia	67,309	4	1	
					315,101 7 10
3,650	By rents receivable	.....			3,454 14 8
220	By transfer fees	.....			204 7 6
300	By canteen account	.....			300 0 0
£1,552,644					£1,542,586 1 2

No. 5—*Net revenue account for the half year ending 30th June, 1885.*

June half year, 1884.				
	Dr.			
£57,413	To interest on debentures, debenture stocks and bonds, accrued to 30th June, 1885.	.....	£57,412 16 6	
	To dividend on the preference stock:			
436	A. 5 per cent.	£430 0 0		
10,000	C. 10 per cent.	10,000 0 0		
15,000	D. 10 per cent.	15,000 0 0		
8,250	E. 10 per cent.	8,250 0 0		
75C	F. 5 per cent.	750 0 0		
2,250	G. 7½ per cent.	2,250 0 0		
23,327	J. 10 per cent.	23,326 18 0		
		£60,006 18 0		
	To dividend on the maximum stocks:			
2,000	B. 4 per cent.	2,000 0 0		
45,500	H. 7 per cent.	45,500 0 0		
			107,506 18 0	
703	To interest on temporary loans	.....	2,094 3 2	
515,482	To balance applicable to dividend on the ordinary stock	.....	517,764 16 4	
£681,171			£685,378 14 0	
	Cr.			
£520,504	By balance for last account	.....	£532,358 18 2	
	Less:			
299,300	Dividend on the ordinary capital for the half year to 31st December, 1884.....	£326,557 4 0		
40,745	Amount carried to reserve fund for the year 1884	13,606 9 3		
			340,163 13 3	
£189,459			£192,195 4 11	
491,712	By revenue account (No. 4).....	.....	493,183 9 1	
£681,171			£685,378 14 0	

No. 6—*Proposed appropriation of balance applicable to dividend 30th June,* 1885.

June half year, 1884.				
£189,459	Net balance brought from last account (see No. 5)	£192,195 4 11		
326,023	Amount of net revenue for the half year (see No. 5)	325,569 11 5		
£515,482			£517,764 16 4	
(12 pr. ct.) 326,553	A dividend on the ordinary stock: 12 per cent. on £5,407,800		327,945 8 0	
£188,929	Balance carried to next half year's acct..		£189,819 8 4	

No. 7—*Reserve fund account for the half year ending 30th June,* 1885.

Dr.			
To balance on 30th June, 1885...	£452,572	16	1
	£452,572	16	1
Cr.			
By balance on 31st December, 1884	£432,526	6	5
By interest on amount invested..	6,440	0	5
By net revenue.....	13,606	9	3
	£452,572	16	1

No. 8—*Insurance fund account for the half year ending 30th June,* 1885.

Dr.			
To balance on 30th June, 1885..	£72,705	19	1
	£72,705	19	1
Cr.			
By balance on 31st December, 1884	£71,589	10	10
By interest on amount invested..	1,116	8	3
	£72,705	19	1

No. 9—*Depreciation fund account for works on leasehold loads for the half year ending 30th June,* 1885.

Dr.			
To balance on 30th June, 1885...	£25,384	13	2
	£25,384	13	2
Cr.			
By balance on 31st December, 1884	£24,244	1	0
By amount brought from revenue account for the half year.....	750	0	0
By interest on amount invested..	389	15	2
	£25,384	13	2

No. 10—*Statement of coals used, etc., for the half year ending 30th June,* 1885.

Description of coal.	In store 31st Dec., 1884. Tons.	Received during half year. Tons.	Carboniz'd during half year. Tons.	Used during half year. Tons.	In store 30th June, 1885. Tons.
Common	207,813	697,493	782,286	2,021	120,999
Cannel	79,684	21,206	27,094	.....	73,796
Total	287,497	718,699	809,380	2,021	194,795

No. 11—*Statement of residual products for the half year ending 30th June,* 1885.

Description.	In store 31st Dec., 1884.	Made during half year.	Used in man'fact'e during half year.	Sold during half year.	In store 30th June, 1885.
Coke, chaldrons	72,207	974,816	197,423	787,436	62,164
Breeze, chaldrons	5,833	107,014	45,779	61,711	5,357
Tar, gallons	737,220	8,973,393	*8,485,781	616,968	607,864
Ammoniacal liquor, butts	17,520	241,893	*227,770	21,134	10,419

* Used in manufacture of tar products and sulphate of ammonia.

No. 12—*Statement of gas made, sold, etc., for the half year ending 30th June,* 1885.

Description of gas.	Quantity made. Thousands.	Quantity sold. Public lights and under contracts. Estimat'd. Thous'nds.	Quantity sold. Private lights Per meter. Thous'nds.	Quantity sold. Total quantity sold. Thous'nds.	Quantity used on works etc. Thousands.	Total quantity accounted for. Thousands.	Quantity not accounted for. Thousands.	Number of public lamps.
Common	8,149,874	409,358	7,203,339	7,612,697	107,549	7,720,246	429,628	44,603
Cannel	330,041	14,341	290,238	204,579	2,758	307,337	22,704	2,246
Total	8,479,915	423,699	7,493,577	7,917,276	110,307	8,027,583	452,332	46,849
June half year, 1884.....	8,231,008	415,413	7,233,928	7,649,341	103,080	7,752,421	478,647	45,270

9535 No. 13—*General Balance Sheet, 30th June,* 1885.

Dr.

To capital:			
Balance at credit thereof (account No. 3).....		£520,839 8 10	
To net revenue:			
Balance at credit thereof (account No. 5).....		517,764 16 4	
To reserve fund:			
Balance at credit thereof (account No. 7).....	£452,752 16 1		
To insurance fund:			
Balance at credit thereof (account No. 8).....	72,705 19 1		
To depreciation fund:			
Balance at credit thereof (account No. 9).....	25,384 13 2		
		550,663 8 4	
To redemption fund:			
Balance at credit thereof.....		11,149 1 9	
To interest on debentures, debenture stocks and bonds, due on 30th June, 1885.....		57,412 16 6	
To preference and maximum dividends due on 30th June, 1885.....		107,506 18 8	
To unclaimed dividends due on 30th June, 1885..		8,992 13 3	
To sundry tradesmen and others, for amount due for coals, stores and sundries.....		155,287 17 5	
To benevolent fund.....		1,667 6 8	
		£1,931,284 7 1	

Cr.

By cash at bankers.....		£128,097 6 9	
By amount on deposit at interest.....		300,000 0 0	
By amount invested:			
Reduced three per cent consols, £442,233 4s. 1d. stock.....	£432,526 6 5		
Three per cent. consols, £77,783 18s. 5d. stock.....	72,705 19 1		
New three per cent. consols, £26,764 9s. 3d. stock.....	26,049 1 7		
		531,281 7 1	

9536 No. 13—(Continued).

By stores on hand, viz.:			
Coals.....	£176,403 0 10		
Coke.....	12,168 6 0		
Tar and ammoniacal liquor and products.....	78,771 4 6		
Sundry stores.....	152,971 12 11		
		£420,314 4 3	
By retiring allowances.....		28,200 0 0	

By accounts due to the company, viz.:

Gas and meter rental:

Quarter ending 30th June 1885...	£467,633	9	10		
Arrears outstanding.....	24,735	10	0		
				492,368	19 10
Coke and other residual products..	£26,130	9	9		
Sundry accounts.....	4,891	19	5		
				31,022	9 2
				£1,931,284	7 1

(Signed) WM. THOS. MAKINS, *Governor.*

Examined and found correct, 23d July, 1885,
(Signed) H. W. CHISHOLM,
FRANCIS FARNAN,
Auditors.

I certify that the above accounts are correct,
(Signed) CHAS. H. PARKES,
Official Auditor.

23*d July*, 1885.
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9537 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, Volume IV, Exhibits, numbered from 8805 to 9536 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Consolidated Gas Company, Complainant-Appellee, against Julius M. Mayer, as Attorney General, *et al.*, Defendants-Appellants, as the same remain of record and on file in my office (Vol. IV, Exhibits).

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 15th day of May, in the year of our Lord One Thousand Nine Hundred and eight and of the Independence of the said United States the One Hundred and thirty-second.

[Seal of U. S. Circuit Court, South Dist. New York.]

JNO. A. SHIELDS, *Clerk.*

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit ——— *vs.* ———. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

9537*a* Circuit Court of the United States, Southern District of New York.

CONSOLIDATED GAS COMPANY OF NEW YORK, Complainant,

vs.

JULIUS M. MAYER, as Attorney General of the State of New York, *et al.*, Defendants.

Before Arthur H. Masten, Esq., Special Master.

EXHIBITS.

VOLUME V.

S. 9431.

U. S. Circuit Court, Southern District N. Y. Filed June 24, 1907. (Seal.) John A. Shields, Clerk.

9537*b*

EXHIBITS.

VOLUME V.

(Here follows Complainant's Exhibit 370, marked p. 9537*c*.)

9538 COMPLAINANT'S EXHIBIT 371.

DR. MARK'S VALUATION OF THE VARIOUS PLANTS INCLUDING ENGINEERING & INTEREST CHARGES, PLUS OMISSIONS FROM MAYER'S SCHEDULE.

RECAPITULATION OF VALUES OF ALL THE PLANTS.

Works Stations.	Mayer.	Marks.
14th Street Station	$2,754,393.00	$3,143,112.00
18th Street Station	614,819.00	449,366.00
21st Street Station	4,265,126.00	3,199,705.00
42nd Street Station	1,816,347.00	1,501,185.00
44th Street Station	2,077,967.00	1,578,665.00
99th Street Station	1,008,610.00	809,565.00
Total	$12,537,262.00	$10,681,598.00
Holder Stations.		
63rd Street Station	$499,273.00	$504,088.00
65th Street Station	1,436,885.00	1,487,058.00
111th Street Station	1,096,360.00	1,079,841.00
132nd Street Station	540,702.00	569,004.00
Inwood Station	26,995.00	23,446.00
	$3,600,215.00	$3,664,037.00
	$12,537,262.00	$10,681,598.00
Total	$16,137,477.00	$14,345,635.00

14TH STREET STATION.

Dr. Mark's valuation, including depreciation	$1,469,064.00
Add depreciation	744,847.00
Total value without depreciation	$2,213,911.00
9539 *Omissions.*	
8 Holders, Mayer's valuation	$507,398.00
Total	$2,721,309.00
General engineering 10%	272,131.00
	$2,993,440.00
Interest charges 5%	149,672.00
Total value of plant	$3,143,112.00
Mayer's valuation	$2,754,393.00

18TH STREET STATION.

Dr. Mark's valuation, including depreciation.....		$2,236,627.00
Add depreciation		165,290.00
Total valuation not included in depreciation.....		$388,917.00
Omissions.		
As per schedule		145.00
		$389,062.00
General engineering 10%		38,906.00
		$427,968.00
Interest charges 5%		21,398.00
Total value of plant not including depreciation.....		$449,366.00
Mayer's valuation	$614,819.00	

21ST STREET STATION.

Dr. Mark's valuation, including depreciation.....		$2,094,746.00
Add amount of depreciation.....		612,304.00
Total value not including depreciation.....		$2,707,050.00
9540 Omission.		
Per schedule		63,258.00
		$2,770,308.00
General engineering 10%		277,031.00
		$3,047,339.00
Interest charges 5%		152,366.00
Total value of plant not including depreciation.....		$3,199,705.00
Mayer's valuation	$4,265,126.00	

42ND STREET STATION.

Dr. Mark's valuation including depreciation.....		$821,468.00
Add depreciation		472,182.00
Total value not included in depreciation.....		$1,293,650.00
Total omission		6,077.00
		$1,299,727.00
General Engineering 10%		129,973.00
		$1,429,700.00
Interest charges 5%		71,485.00
		$1,501,185.00
Mayer's valuation	$1,816,347.00	

9541 44TH STREET STATION.

Dr. Mark's valuation including depreciation	$1,230,336.00
Add depreciation	132,808.00
Total value not including depreciation	1,363,144.00
Omissions.	
Per schedule	3,665.00
	$1,366,809.00
General engineering 10%	136,681.00
Total	$1,503,490.00
Interest charges 5%	75,175.00
Total value of plant including depreciation	$1,578,665.00
Mayer's valuation $2,077,967.00	

63RD STREET STATION.

Dr. Mark's valuation including depreciation	$392,796.00
Add depreciation	43,644.00
Total value not including depreciation	$436,440.00
Omissions.	
Per schedule	None
	$436,440.00
General engineering 10%	43,644.00
	$480,084.00
Interest charges 5%	24,004.00
Total value of plant not including depreciation	$504,088.00
Mayer's valuation $499,273.00	

9542 65TH STREET STATION.

Dr. Mark's valuation including depreciation	$1,205,997.00
Add depreciation	81,499.00
Total value not including depreciation	$1,287,496.00
Omissions.	
None	
Total	
	$1,287,496.00
General engineering 10%	128,750.00
	$1,416,246.00
Interest charges 5%	70,812.00
Total value of plant not including depreciation	$1,487,058.00
Mayer's valuation $1,436,885.00	

99TH STREET STATION.

Dr. Mark's valuation including depreciation.....	$568,751.00
Add depreciation	129,974.00
	$698,725.00
Omissions.	
Per schedule	2,198.00
	$700,923.00
General engineering 10%	70,092.00
	$771,015.00
Interest charges 5%	38,550.00
Valuation of plant not included in depreciation.....	$809,565.09
Mayer's valuation $1,008,610.00	

9543

111TH STREET STATION.

Dr. Mark's valuation including depreciation.....	$838,147.00
Add depreciation	96,780.00
Total valuation not including depreciation.....	$934,927.00
Omissions.	
None	
	$934,927.00
General engineering 10%	93,493.00
	$1,028,420.00
Interest charges 5%	51,421.00
Total value of plant not including depreciation.....	$1,079,841.00
Mayer's valuation $1,096,360.00	

132ND STREET STATION.

Dr. Mark's valuation not including depreciation....	$493,164.00
Omissions.	
None	
Total value not including depreciation.....	$493,164.00
General engineering 10%	49,316.00
Total	$542,480.00
Interest charges 5%	27,124.00
Total value of plant not included in depreciation....	$569,604.00
Mayer's valuation $540,702.00	

9544 INWOOD STATION.

Dr. Mark's valuation including depreciation.....		$10,596.00
Add depreciation		9,704.00
Total value not including depreciation.....		$20,300.00
Omissions.		
None		
Total		$20,300.00
General engineering 10%		2,030.00
		$22,330.00
Interest charges 5%		1,116.00
Total value of plant not including depreciation.....		$23,446.00
Mayer's valuation	$26,995.00	

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COMPLAINANT'S EXHIBIT 372.

CONSOLIDATED GAS COMPANY.

	Edgerton's Estimate Depr.	Edgerton's Values, New	Omissions	Edgerton's New Value Including Omissions from Mayer's Sched.
14th Street Plant	$1,405,966.00	$1,558,736.00	$13,279.00	$1,572,015.00
42d Street Plant	1,008,801.25	1,169,297.00	11,216.00	1,180,513.00
44th Street Plant	1,110,878.00	1,201,968.00	14,550.00	1,216,518.00
21st Street Plant	2,176,492.00	2,408;233.00	1,610.00	2,409,843.00
99th Street Plant	544,708.00	590,366.00	50,493.00	640,859.00
18th Street Plant	234,886.00	284,200.00	10,396.00	294,596.00
63d Street Plant	623,740.00	633,228.00	..	633,228.00
65th Street Plant	892,171.00	927,373.00	..	927,373.00
111th Stret Plant	900,406.00	1,003,623.00	20,000.00	1,023,623.00
132d Street Plant	457,524.00	475,779.00	..	475,779.00
Inwood	11,772.00	13,901.00	..	13,901.00
	$9,367,344.25	$10,266,704.00	$121,544.00	$10,388,248.00
Add to above values for engineering superintendence and inspection, 3 per cent	281,020.00	308,001.12	3,646.32	311,647.44
Add for interest on money necessary to be used for construction, 4 per cent	374,693.00	410,668.16	4,861.76	415,529.92
	$10,023,057.25	$10,985,373.28	$130,052.08	$11,115,425.36
To Edgerton's Cost New, as above computed				10,388,248.00
Add as per Mayer's Schedule, General Engineering, 10 per cent				1,038,824.00
				$11,427,072.00
Add as per Mayer's Schedule, Interest, 5 per cent				571,353.00
				$11,998,425.00

2551

9545

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

6574

9550 COMPLAINANT'S EXHIBIT 376.

(For Identification, Complainant's Exhibit 374.)

DETAILED

ESTIMATED WEIGHTS OF FIVE LIFT 5,000,000 CU. FT. GAS HOLDER IN STEEL TANK, WITH SPHERICAL CROWN AND PERMANENT FRAME, 20 TRUSSED STANDARD GUIDE FRAME AND FOUR 30" DIAMETER INLET AND OUTLET PIPES.

DIMENSIONS.

I Section 180' 0" dia by 38' 8" high,
II Section 182' 6" dia by 38' 8" high,
III Section 185' 0" dia by 38' 8" high,
IV Section 187' 6" dia by 38' 2" high,
V Section 190' 0" dia by 37' 8" high,
Steel tank 192' 9" dia by 40' 1" deep.

Pressures.	Air.	Gas. Sp. Gy. 600
I Section	5.25 inches,	4.78 inches.
I & II Section	8.28 inches,	7.59 inches.
I, II & III Sections	11.07 inches,	10.17 inches.
I, II, III & IV Sections	13.62 inches,	12.51 inches.
I, II, III, IV & V Sections	15.89 inches,	14.59 inches.

STEEL TANK 192' 9" BY 40' 1"

(20 Sheets in Circumference.)

9551 OPEN HEARTH STEEL.

Sq. Ft.		Lbs.	Sq. Ft.
27800	Interm. bottom 5/16 in	12.75	354,578
	5% of laps		17,729
1800	½" Out. bottom 36" wide	20.4	36,720
	4% of waste		1,469
2504	1⅝" Rim 1 includ. hz. lap 3' 10" h.	66.35	166,140
3030	1½" Rim 2 includ. hz. lap 4' 5¾".	61.25	185,588
3275	1⅜" Rim 3 includ. hz. lap 4' 10½".	56.14	183,859
3652	1⅛" Rim 4 includ. hz. lap 5' 8"	45.93	167,736
3534	⅞" Rim 5 includ. hz. lap 5' 5"	35.73	126,270
3573	⅝" Rim 6 includ. hz. lap 5' 7½".	25.52	91,182
3393	½" Rim 7 includ. hz. lap 5' 3"	20.42	69,285
3028	⅜" Rim 8 includ. hz. lap 4' 11¼".	15.31	46,359
384	1 1/16" 20 in. butts rim I 63" w	43.38	16,658
219	1" 20 out. butts rim 36½"	40.83	8,942
379	1" 20 in. butts rim II 46" w	40.83	15,475

192	15/16"	20 out. butts rim 28".....	38.27	7,348
350	15/16"	20 in. butts rim III 46" w..	38.27	13,395
260	7/8"	20 out. butts rim III 28"...	35.73	9,290
393	13/16"	20 in. butts rim IV 38" w...	33.17	13,036
217	3/4"	20 out. butts rim IV 23½"...	30.60	6,640
271	9/16"	20 in. butts rim V 31½"...	23.96	6,493
193	½"	20 out. butts rim V 19¼"...	20.41	3,939
288	7/16"	20 in. butts rim VI 29¼"...	17.86	5,144
163	3/8"	20 out. butts rim VI 17¾"w	15.31#	2,497#
222	3/8"	20 in. butts rim VII 27½" N	15.31	3,552
159	5/16"	20 out. butts rim VII 16¾"	12.75	2,027
96	5/16"	20 in. butts rim VIII 11½".	12.75	1,224
90	¼"	20 out. butts rim VIII 12".	10.2	918
2161	½"	Top curb 42" w.....	20.41	44,106
	3% of waste			1,323
60	Sets con. plates top curb brkys.....		30.00	1,800
75	Hand hole covers		15.00	1,125
	Total open hearth steel...			1,611,848

9552 STEEL ANGLE.

609 ft. 8" x 8" 7/8" bot. curb.....	45.8"	27,892#	
608 ft. 5" x 5" x ½" inn. top curb.....	16.2	9,850	
628 ft. 5" x 5" x ½" out top curb.....	16.2	10,174	
660 ft. 2½" x 2½" x 5/16" (60 T. c. brks)	5.00	3,300	
120 ft. 3" x 3" x 3/8" lowering angle....	7.2	864	
Total steel angle.....			52,080#

STEEL CHANNEL.

1604 ft. 7" channel 40 tank guides.....	12.25#		19,649#

STEEL I BEAM.

260 ft. 12" I 40 landing beams.....	31.5#		8,190#

FLANGED STEEL.

20 butts for 8" angle.....	25.0#	500#	
40 butts for 5" angle.....	12.0	480	
Total flanged steel.....			980#
210 ft. 5½" x ½" butts for out. botm.	9.35#	1,964#	
365 ft. 3" x 3/8" land. beam flags.....	3.83	1,398	
64 ft. 5" x 11/16" fillers for do.....	11.70	749	
144 ft. 5" x 3/8" do do.....	6.38	919	
175 ft. 5" x ½" do do.....	8.50	1,488	
160 ft. 3" x 11/16" do do.....	7.02	1,129	
140 ft. 5½" x ½" butts for top curb..	9.35	1,309	
Total steel bar.....			8,956#

GAS PIPE.

1260 ft. 1″ dia. 2 hand rails.....	1.67#	2,104#	
80 ft. 3″ dia. 2 overflows.....	7.54	603	
Total gas pipe.....			2,707#

9553

MALLEABLE IRON.

60 Mal. iron guard rail posts....	23.00#	1,380#
2 Sets of c. i. overflow pockets..	70.00#	140#
Bolts		750#
Tank rivets		83,270#
Total steel tank		1,789,950 lbs.

STAIRS FOR STEEL TANK.

STEEL CHANNEL.

116 ft. 7″ stair carriage	9.75#	1,131#	
12 ft. 7″ interm. platform.....	9.75	117	
12 ft. 7″ top landing	9.75	117	
Total steel channel			1,365#

STEEL ANGLE.

2—Sup. Brackets for interm. platform	240#	480#	
1—Set diag. for do.....		100	
1—Brkt. at stand. top landing.....		210	
1—Brkt. at tank		200	
Connect. angle at do		60	
Hand rail posts at do.....		20	
Knees for 7″ channel		15	
Total steel angle			1,085#

TANK STEEL.

1—Top landing, ¼″		330#	
6—Butts for 7″ channel.....	12#	72	
Total tank steel			402#

GAS PIPE.

260 ft. 1″ hand rail.....	1.67#	438#	438#
20—Malleable iron posts			460#
2—Sets of scrolls	15#		30#

9554 STEEL RIBBED PLATE.

60—Treads	22#	1,320#	
1—Interm. platform		310	
Total steel ribbed plate...			1,630#
Bolts		50#	
Tank rivets		80#	
Total stairs for steel tank.			5,540#

4—30" DIA. IN & OUTLET PIPES AND DUCTS.
4—STEEL DUCTS 25' 0" LONG.
TANK STEEL.

1000 sq. ft. 3/8" shell	15.3#	15,300#	
50 sq. ft. 3/8" heads	15.3	765	
Total tank steel			16,065#

STEEL ANGLE.

380 ft. 3" x 3" x 3/8 channel support...	7.2#	2,740#	
200 ft. 3" x 3" x 3/8 top flg. of duct....	7.2	1,440	
85 ft. 3½" x 3½" x 3/8" head flg.....	8.5	723	
Total steel angle			4,903#
150 ft. 7" channel sup. for tank botm..	9.75#		1,463#

STEEL BAR.

110 ft. 5" x 3/8" butts for shell.....	6.38#	702#	
58 ft. 3" x 3/8" knees for 7" chan....	3.83	222	
Total steel bar			924#
Rivets			1,005#
Total, 4 steel ducts			24,360#

9555 4—30" DIA. STAND PIPES, 40 FT. LONG.
TANK STEEL.

1264 sq. ft. 3/8" shell	15.3#	19,339#	
5% for laps		961	
Total tank steel			20,300#
Rivets			990#
Total 4—30" dia. steel stand pipes			21,290#

CAST IRON PIPES AND FITTINGS.

4	30″ flg. pipes 4′ 9″ lg.....	1,530#	each	6,120#
4	30″ flg. pipes 2′ 0″ lg.....	830	"	3,320
2	30″ flg. pipes 10′ 0″ lg.....	2,950	"	5,900
4	30″ drip pot crosses.....	2,580	"	10,320
4	30″ pump flanges	345	"	1,380
4	30″ crosses std.	1,920	"	7,680
12	30″ c. i. flanges for st. pipe....	300	"	3,600
2	30″ flgd. tees std.....	1,670	"	3,340
12	30″ blank flanges	290	"	3,480
	Bolts			1,460
	Total cast iron pipe and fittings			46,600#

20 STANDARD SUPPORTS 40 FT. HIGH.

STEEL ANGLE.

130 ft. 4″ x 3″ x ⅜″ angle top flg.....	8.5#	1,104#	
1600 ft. 3″ x 3″ x ⅜″ front chord	7.2	11,520	
1630 ft. 3″ x 3″ x ⅜″ back chord.....	7.2	11,736	
Total steel angle.....			24,360#
815 ft. 10″ St. I Beam back chord....	35#		28,525#
235 ft. 6″ St. channel brace to tank..	8#		1,880#
9556			
690 ft. 3″ Z stud. sup. to tank.....	9.7#	6,694#	

STEEL Z BAR.

180 ft. 3″ Z guide rail to tank.....	9.7	1,746
Total Z bar.....		8,440#

STEEL BAR.

550 ft. 4″ x ⅜″ up. lattice.....	5.1#	2,805#
368 ft. 3½″ x ⅜″ interm. lat.....	4.47	1,645
340 ft. 3″ x ⅜″ lower. lat.....	3.83	1,302
412 ft. 6″ x ⅜″ front web.....	7.65	3,153
40 ft. 6″ x ¼″ butts for do. to top....	5.10	204
40 ft. 9″ x ¼″ butts for do. to top base	7.65	306
482 ft. 6½″ x ⅜″ frt. chord stif.....	8.3	4,000
Total steel bar.....		13,415#

TANK STEEL.

20	Top webs 5' 7" x 15" x ⅜"	67#	1,340#	
20	Base webs ⅜"	190	3,800	
40	Brace con. plates	12	480	
	Total tank steel			5,620#
	Bolts			400
	Tank rivets			2,360#
	Total 20 standard supports			85,000#

20—TRUSSED STANDARD GUIDE FRAME.

STEEL "I" BEAM.

2050	ft. 9" "I" front chord sect. 1 to 3.	25#	51,250#	
1875	ft. 9" "I" front chord sect. 4 to 6.	21	39,375	
1965	ft. 8" "I" front web sect. 1 to 3.	20.5	40,283	
1875	ft. 8" "I" front web sect. 4 to 6.	18	33,750	
725	ft. 10" "I" back chord sect. 1	40	29,000	
1240	ft. 10" "I" back chord sect. 2 & 3.	35	43,400	
1880	ft. 10" "I" back chord sect. 4 to 6.	30	56,400	
432	ft. 6" struts sect. 1 to 6	14.75	6,372	
	Total steel "I" beams			299,830#

9557

STEEL CHANNEL.

3480	ft. 5" stand. braces sect. 1 to 6	9#	31,320#	
390	ft. 4" channel ladder	5.25	2,048	
	Total steel channel			33,368#

STEEL ANGLE.

90	ft. 3½" x 3½" x ⅜" base flgs	8.5#	765#	
1610	ft. 3" x 3" x ⅜" hz. gir. sup. flg.	7.9	11,592	
1380	ft. 3½" x 3" x ⅜" vert. gir. sup. flg.	7.8	10,764	
340	ft. 6" x 3½" x ⅜" knees at 6" "I" strut	11.7	3,978	
180	ft. 3" x 3" x ⅜" lug flg. at do. hz. strut	7.2	1,296	
2470	ft. 5" x 3" x ½" gir. chord sect. 1.	12.8	31,616	
2470	ft. 5" x 3" x ½" gir. chord sect. 2.	12.8	31,616	
2470	ft. 5" x 3" x 7/16" gir. chord sect. 3	11.2	27,664	
2470	ft. 5" x 3" x 7/16" gir. chord sect. 4	11.2	27,664	
2456	ft. 5" x 3" x ⅜" gir. chord sect. 5.	9.7	23,823	
1220	ft. 5" x 3" x 5/16" gir. chord lower sect. 6	8.2	10,004	
1220	ft. 6" x 3½" x ½" up. gird. chord sect. 6	15.5	18,910	

4550	ft. 3″ x 3″ x ⅜″ gird. braces sect. 1-5	7.2	32,760	
690	ft. 4″ x 4″ x ½″ gird. braces sect. 6.	12.8	8,832	
190	ft. 3″ x 3″ x ⅜″ brkt. at top stand.	7.2	1,368	
7060	ft. 2½″ x 2½″ x 5/16″ hz. tie struts sect. 1 to 6	5.00	35,300	
1790	ft. 6″ x 4″ x 13/16″ diag. sect. 1..	25.6	45,824	
1620	ft. 6″ x 4″ x ¾″ diag. sect. 2.....	23.8	38,556	
1620	ft. 6″ x 4″ x ⅝″ diag. sect. 3.....	20.1	32,562	
1620	ft. 5″ x 3½″ x 9/16″ diag. sect. 4.	15.2	24,624	
1625	ft. 5″ - 3½″ x ⅜″ diag. sect. 5....	10.3	16,738	
1625	ft. 3½″ x 3″ x ⅜″ diag. sect. 6...	7.8	12,675	
340	ft. 3½″ x 3″ x ⅜″ lower lug. flg. diag. 1	7.8	2,652	
25	ft. 2½″ x 2½″ x 5/16″ lad. braces.	5.0	125	
	Total steel angle.....			451,708#

9558 TANK STEEL.

40	front web base plts. of std. 5/16″..	34.00#	1,360#	
20	Back web base plts. of std. 5/16″..	12.00	240	
80	Std. web plates girds. 1 to 4 ⅜″...	162.00	12,960	
20	Std. web plates girds. 5 ⅜″.....	140.00	2,800	
20	Std. web plates girds. 6 ⅜″.....	120.00	2,400	
80	Gird. end pls. sect. 1 & 2.....	185.00	14,800	
80	Gird. end pls. sect. 3 & 4.....	170.00	13,600	
40	Gird. end pls. sect. 5.....	155.00	6,200	
40	Gird. end pls. sect. 6.....	135.00	5,400	
400	Gird. brace con. pls. to frt. ch. 1 to 5	6.2	2,480	
400	Gird. brace con. pls. to back ch. 1 to 5	7.6	3,040	
240	Hz. tie strt. con. pls. to back chd. 1-6	7.65	1,836	
120	Hz. tie strt. con. pls. to frt. chd. 1 to 6.....	25.00	3,000	
40	Lower thrust pls. gird. 6.....	30.00	1,200	
40	Up. inner thrust pls. gird. 6 ½″...	150.00	6,000	
40	Up. outer thrust pls. gird. 6 ½″...	110.00	4,400	
120	Con. pls. 5″ chan. to 6″ "I" beam strt. sect. 1 to 6.....	24.00	2,880	
40	Lower lug. pls. diags. sect. 1.....	65.00	2,600	
60	Diag. cent. pls. sect. 1 to 3.....	36.00	2,160	
60	Diag. cent. pls. sect. 4 to 6.....	32.00	1,920	
20	Brkt. web pls. top of std.....	27.00	540	
	Total tank steel.....			91,816#

9559 STEEL BAR.

340	ft. 10" x 3/8" vert. conpls. st. web..	12.75#	4,335#	
280	ft. 2" x 3/8" fillers for do.....	2.55	714	
640	ft. 5" x 3/8"vert. con. pls. do. frt. ch.	6.38	4,083	
220	ft. 5" x 3/8" vert. con. pls. 6" "I" beam strt.	6.38	1,404	
1320	ft. 3" x 3/8" fillers hz. gird. flgs....	3.83	5,050	
300	ft. 4" x 3/8" joint pl. 9" "I" frt. ch. flg.	5.10	1,530	
300	ft. 2" x 1/4" fillers for do.....	1.7	510	
300	ft. 6" x 5/16" butt 8" "I" frt. ch. web	6.38	1,914	
125	ft. 4" x 3/8" joint pl. 8" "I" frt. ch. flg.	5.10	638	
250	ft. 5" x 3/8" butts for 10" "I" fl. bk. ch.	6.38	1,595	
300	ft. 7½" x 5/16" butts 10" "I" web bk. ch.	7.97	2,391	
6100	ft. 2½" x 5/16" lattice for hz. tie strt.	2.65	16,165	
475	ft. 5" x 5/16" lattice for hz. tie strt.	5.21	2,022	
8600	ft. 3" x 3/8"gird. lat. sect. 1 to 5...	3.83	32,238	
1730	ft. 3" x 5/16" gird. lat. sect. 6....	3.19	5,519	
390	ft. 6" x ½" diag. con. straps sect. 1.	10.2	3,978	
325	ft. 6" x ½" diag. con. straps sect. 2.	10.2	3,315	
295	ft. 6" x ½" diag. con. straps sect. 3.	10.2	3,009	
275	ft. 5" x ½" diag. con. straps sect. 4.	8.5	2,338	
215	ft. 5" x 3/8" diag. con. straps sect. 5.	6.38	1,372	
170	ft. 3½" x 3/8" diag. con. straps sect. 6	4.47	760	
10	ft. 3½" x 3/8" filler stand. base....	4.47	45	
170	ft. 2½" x ½" ladder braces	4.25	723	
	Total steel bar.....			96,854#
290	ft. 7/8" round steel ladder rounds..	2.04#		594#
240	c. i. fillers bet. 5" channel & bk. ch.	3.00#		720#
	Tank rivets			27,300#
	Total guide frame.... ..			1,002,190#

9560 GUIDE FRAME STAIRS.

STEEL CHANNEL.

423	ft. 7" St. carriages sect. 1 to 5.....	9.75#	4,124#
85	ft. 7" St. carriages sect. 6.....	9.75	829
30	ft. 7" Top and botm. land. sect. 1 to 5	9.75	293
8	ft. 7" Top and botm. land. sect. 6..	9.75	78
22	ft. 7" Base land. top curb sect. 1...	9.75	215
35	ft. 7" base land. sect. 2 to 6.....	9.75	341
	Total steel channel.....		5,880#

STEEL ANGLE.

23 ft.	3" x 2½" x ⅜" land. brkt. top curb	6.6#	152#	
18 ft.	3" x 3" x ⅜" land brkt. top curb	7.2	130	
25 ft.	2½" x 2½" x 5/16" land. brkt top curb	5.0	125	
10 ft.	2½" x 2½" x 5/16" cross con. for curb	5.00	50	
205 ft.	5" x 3" x ⅜" sup. angle std. & gird.	9.8	2,009	
20 ft.	2½" x 2½" x 5/16" vert. angle for gird.	5.00	100	
15 ft.	2½" x 2½" x 5/16" lugs for do.	5.00	75	
40 ft.	2½" x 2½" x 5/16" diag. lugs for do.	5.00	200	
25 ft.	3½" x 3½" x ⅜" knees 7" chan. to brkt.	8.5	213	
18 ft.	2½" x 2½" x 5/16" sup. angle for botm. land	5.0	90	
176 ft.	2½" x 2½" x 5/16- gal. sup.	5.0	850	
272 ft.	2½" x 2½" x 5/16" gal. brkt.	5.00	1,360	
380 ft.	2½" x 2½" x 5/16" hand rail posts	5.00	1,900	
52 ft.	4½" x 3" x ⅜" knees for do.	9.1	473	
60 ft.	4" x 3" x ⅜" hangers	8.5	510	
8 ft.	3" x 3" x ⅜" brace for top land.	7.2	58	
	Total steel angle			8,295#
15 ft.	3" x 3" x ⅜" St. tee frt. ch. top ch. brkt.	7.8#	120#	120#

9561

STEEL BAR.

18 ft.	2½" x ⅜" brace for top curb land	3.19#	57#	
6 ft.	6¾" x ⅜" web for do	8.61	52	
130 ft.	3" x ¼" diag. bet. struts	2.55	332	
8 ft.	5½" x 5/16" con. pl. hz. hd. rail posts	5.84	47	
15 ft.	2½" x ⅜" knees for do.	3.19	48	
30 ft.	3" x 5/16" con. pls. for gird. gal. brkt.	3.19	96	
25 ft.	5½" x 5/16" do.	5.84	146	
10 ft.	3" x ⅝" sep. for sup. brkt.	6.38	64	
10 ft.	5" x ⅝" do.	10.63	106	
17 ft.	4" x ¼" butts for gal. flg. pls.	3.4	62	
	Total steel bar			1,010#
270	Treads st. ribbed plate			4,590#
300	Stirrup bolts for hand rail			150#

TANK STEEL.

Stair:

12	Lower con. pls. 3/8"	15#	180#	
12	Upper con. pls. 3/8"	17	204	
40	Con. pls. sup. brkts	8	320	
10	Back con. pls. do	9	90	
10	Hanger lugs back plate	10	100	
10	Hanger lugs plates	27	270	
98	sq. ft. 1/4" lower land	10.2	1,000	
78	sq. ft. 1/4" upper land	10.2	796	
365	sq. ft. 1/4" galleries	10.2	3,723	
1	Set con. pls. top land. brkts		50	
1	Set con. pls. top land. brkts		33	
40	sq. ft. 1/4" top landing	10.2	409	
	Total tank steel			7,175#

9562

GAS PIPE.

660	ft. 1" dia. hand rail stairs	1.67#	1,102#	
315	ft. 1" dia. hand rail gallery	1.67	528	
	Total gas pipe			1,630#

ROUND STEEL.

515	ft. 3/4" stair truss rod	1.5#	773#	
60	ft. 1 1/4" stair strut	4.1	246	
290	ft. 7/8" hanger rods	2.05	596	
	Total round steel			1,615#
	Bolts			50#
	Rivets			1,155#
	Total guide frame stairs			31,670#

HOLDER.

INNER SECTION 180' 0" DIA. x 38' 8" Hight.

STEEL ANGLE.

566	ft. 8" x 8" x 7/8" top curb	45.8#	25,923#
550	ft. 6" x 6" x 7/8" inner curb	33.4	18,370
25	ft. 2 1/2" x 2 1/2" x 5/16" land plat.	5.00	125
310	ft. 3" x 3" x 1/2" vert. leg top flg.	9.4	2,914
375	ft. 2 1/2" x 2 1/2" x 5/16" (80 guard rail stds.)	5.00	1,875
167	ft. 2 1/2" x 2 1/2" x 5/16" (4 seal bonnet flgs.)	5.00	835
50	ft. 2" x 2" x 1/4" (4 seal bonnet flgs.)	3.2	160
	Total steel angles		50,202#

STEEL CHANNEL.

571 ft.	10″ channel cup	35.00#	19,985#	
14 ft.	5″ land. platforms	6.5	91	
	Total steel channel			20,076#
576 ft.	2½″ special bead, cup stif	4.25#		2,448#
9563				

STEEL BAR.

1561 ft.	18″ x 5/16″ (40 ribband pls.)	19.13#	29,866#	
225 ft.	2″ - ⅜″ guard rail stds	2.55	574	
110 ft.	2″ x ⅝″ cup rest blocks	4.25	468	
10 ft.	2½″ x ¼″ platform lattice	2.13	21	
44 ft.	3″ x ⅜″ for stif. rings seal bon.	3.83	169	
27 ft.	3″ x ⅜″ 3 stif. rings manhole crown	3.83	103	
320 ft.	11″ x 9/16″ (80 out. butts, out. cr. crs.)	21.02	6,726	
280 ft.	11″ x ½″ 80 in. butts, out. cr. crs.	18.7	5,236	
36 ft.	10″ x 7/16″ 20 out. butts top shell	14.88	536	
27 ft.	10″ x ⅜″ 20 in. butts top shell	12.75	344	
50 ft.	5″ x ⅜″ 20 out. butts bottm. shell	6.38#	319#	
30 ft.	5″ x ½″ 20 out. butts cup sheet	6.38	191	
550 ft.	3½″ x 3/16″ butts for vert. legs	2.23	1,227	
230 ft.	4″ x ¼″ butts heads	3.4	782	
Liners for vert. legs			3,000	
40—Base plates for rollers		17.0	680	
	Total steel bar			50,242#

TANK STEEL.

28 sq. ft.	⅜″ center crown plate 6′ dia.	15.3#	428#	
1890 sq. ft.	⅞″ out. crown crs. 44″ w.	35.7	67,473	
	6% for laps		4,048	
2250 sq. ft.	7/16″ crs. next out. crwn. 51″ w.	17.85	40,163	
	8% for laps		3,213	
848 sq. ft.	¾″ top shell crs. 21″ w.	30.6	25,949	
1318 sq. ft.	⅜″ botm. shell crs. 30″ w.	15.3	20,165	
	6% for laps		1,210	
855 sq. ft.	⅜″ cup sheet 18″ w.	15.3	13,082	
1659 sq. ft.	¼″ crs. next to top 35″ w.	10.2	16,922	
	7% for laps		1,185	
3	Manhole covers for crown	75.0	225	
88 sq. ft.	⅜″ top for 4 seal bonnets	15.3	1,346	
4	Manhole covers for same	90.0	360	
2	Webs for landing platform	50.00	100	
	Total steel tank			195,869#

9564

SHEET STEEL.

2810	sq. ft. No. 7 sec. crs. from out. crown 66″ w.	7.65#	21,497#	
	9% for laps		1,934	
226	sq. ft. 3/16″ seal bonnet sides	7.65	1,729	
	5% for laps		86	
1697	sq. ft. 3/16″ crs. next to bottm. 36″ w.	7.65	12,982	
	5% for laps		642	
	Total sheet steel			38,870#

GAS HOLDER STEEL.

14627	sq. ft. No. 10 9 interm. shell crs. 38″ w.	5.74#	83,960#	
	5% for laps		4,180	
18517	sq. ft. No. 10 interm. crwn	5.74	106,288	
	11% for laps		11,682	
	Total gas holders steel			206,110#

FLANGED SHEET STEEL.

84	sq. ft. 3/16″ seal bonnet cover	7.65#	642#	
	5% for laps and waste		32	
3808	sq. ft. No. 40 vert. legs	7.65	29,131	
480	sq. ft. 3/16″ 40 vert. leg heads	7.65	3,674	
	Total flgd. sheet steel			33,480#

FLANGED STEEL.

20	Butts for 8″ x 8″ angle	27.0#	540#	
20	Butts for 10″ channel	20.0	400	
400	sq. ft. ¼″ 40 vert. legs	10.2	4,080	
40	Vert. legs stif. heads	25.0	1,000	
	Total flanged steel			6,260#

9565

4628	ft. 1″ dia. gas pipe 3 guard rails	1.67#	7,733#
4	Seal bonnet valves	50.00	200
20	St. top carriages with tang. rollers	22.50	45,000
40	C. I. invert. cup rollers	185.00	7,400
	Stirrup bolts		150
	Bolts		1,110
	Gas holder rivets		15,600
	Boiler rivets		14,300
	Total inner section		695,050#

SECOND SECTION 182'6" BY 38'8" HIGH.

STEEL CHANNEL.

574 ft.	10" grip	35.00#	20,090#	
579 ft.	10" cup	30.00	17,370	
10 ft.	5" platform	5.00	50	
	Total channel			37,510#

STEEL ANGLE.

568 ft.	3½" x 2½" x 5/16" grip gd.	5.00#	2,840#	
576 ft.	3" x 2½" x 5/16" out, gal. angle	5.50	3,168	
200 ft.	2½" x 2½" x 5/16" 60 interm. gal. brkts.	5.00	1,000	
126 ft.	3" x 3" x ⅜" 60 interm. gal. brkts.	7.2	907	
133 ft.	3" x 3" x ⅜" 40 main gal. brkts.	7.2	958	
84 ft.	4" x 3" x ⅜" 40 main gal. brkts.	8.5	717	
	Total steel angle			9,590#

SPECIAL STEEL BEAD.

573 ft.	2½" bead grip stif	4.25#	2,435#	
584 ft.	2½" bead grip stif	4.25	2,485	
	Total special steel bead			4,920#

9566

STEEL BAR.

220 ft.	2" x ⅝" cup rest blocks	4.25#	935#	
75 ft.	5" x ½" butts for gal. plte	8.5	638	
40	Base con. plates at legs for rollers	17.0	680	
1540 ft.	17½" x 5/16" ribband plates	18.55	28,567	
	Total steel bar			30,820#

FLANGED STEEL.

1576 ft.	¼" 40 vert. in. legs	14.7#	23,167#	
160	Butts for in. & out. legs	5.3	843	
40	Butts for 10" channel	20.0	800	
	Total flanged steel			24,810#
1540 ft.	⅜" steel (Carnegie) 40 out. vert. legs	17.75#		27,335

TANK STEEL.

1795	sq. ft. ⅜″ grip sheet 38″ w.....	15.3#	27,464#	
868	sq. ft. ⅜″ cup sheet 18″ w.....	15.3	13,280	
957	sq. ft. ⅜″ top shell 24″ w.....	15.3	14,642	
1346	sq. ft. ⅜″ botm. shell 30″ w.....	15.3	20,594	
	5% for laps		3,800	
716	sq. ft. ⅜″ gal. & plat. 15″ wide...	15.3	10,955	
	3% for waste.....		380	
60	Interm. gal. brkts. 5/16″.....	22.0	1,320	
40	Main gal. brkts. 5/16″.....	26.0	1,040	
	Total tank steel.....			93,475#

SHEET STEEL.

2955	sq. ft. 3/16″ crs. next top & botm. 34″ wide	7.65#	22,605#	
	5% for laps		1,095	
	Total sheet steel.....			23,700#

9567 GAS HOLDER STEEL.

14874	sq. ft. No. 11 9 interm. crs. 38″	5.10#	75,857#	
	5% for laps.....		3,793	
	Total gas holder steel..			79,650#
1640	ft. 1″ dia. gas pipe 3 gd. rails..	1.67#		2,740#
80	Mal. iron hand rail posts.....	23.0		1,840
20	St. top carriages w. tang. rollers	1400.00		28,000
40	C. I. cup rollers.....	185.00		7,400
	Bolts			710
	Gas holder rivets.....			5,300
	Boiler rivets			10,000
	Total second section...			387,800#

THIRD SECTION 185′ 0″ DIA. BY 38′ 8″ HIGH.

STEEL CHANNEL.

581	ft. 10″ grip.....	30.0#	17,430#	
586	ft. 10″ cup.....	30.0	17,580	
6	ft. 4″ platform.....	6.25	38	
	Total channel			35,050#

STEEL ANGLE.

576 ft.	2½" x 2½" x 5/16 grip gd...	5.0#	2,880#	
584 ft.	3" x 2½" x 5/16" out. gal. angle	5.5	3,212	
160 ft.	2½" x 2½" x 5/16" 60 interm. gal. brkts.....	5.0	800	
126 ft.	3" x 3" x ⅜" do.....	7.2	907	
106 ft.	3" x 3" x ⅜" 40 Main gal. brkts.	7.2	763	
84 ft.	4" x 3" x ⅜" do.....	8.5	714	
	Total steel angle.....			9,275#

9568

SPECIAL STEEL BEAD.

578 ft.	2½" grip stif.....	4.25#	2,457#	
588 ft.	2½" cup stif.....	4.25	2,499	
	Total steel bead.....			4,955#

STEEL BAR.

220 ft.	2" x ⅝" cup rest blocks.....	4.25#	935#	
75 ft.	5" x ½" butts for gal. plate....	8.5	638	
40	base con. plts. for legs for rollers..	17.0	680	
1540 ft.	17½" x ¼" 40 ribband plates..	14.86#	22,887	
	Total steel bar.....			25,140#

TANK STEEL.

1630 sq. ft.	⅜" grip sheet, 34" w.....	15.3#	24,939#	
880 sq. ft.	⅜" cup sheet, 18" w.....	15.3	13,465	
1075 sq. ft.	⅜" top shell 24" w.....	15.3	16,448	
1390 sq. ft.	⅜" bottom shell 30" w.....	15.3	21,267	
	5% for laps.....		3,690	
723 sq. ft.	⅜" gal. and platform 15" w.	15.3	11,061	
	3% for waste.....		330	
60	interm. gal. brkts. 5/16".....	17.5	1,050	
40	Main gal. brkts. ⅜".....	21.0	840	
	Total tank steel.....			93,090#

SHEET STEEL.

3005 sq. ft.	3/16" ers. next top & botm. 34" wide.....	7.65#	22,988#	
	5% for laps.....		1,102	
	Total sheet steel.....			24,090#

9569 GAS HOLDER STEEL.

15096	sq. ft. No. 11 9 interm. ers. 38″ w.	5.1#	76,990#	
	5% for laps		3,850	
	Total gas holder steel			80,740#

FLANGED STEEL.

40	butts for 10″ channel	20.0#	800#	
1576	ft. ¼″ 40 vert. legs	14.70	23,167	
160	butts for in. & outr. legs	5.3	843	
	Total flanged steel			24,810#
1540	ft. ⅜″ steel (Carnegie) 40 out legs	17.75#		27,335#
1670	ft. 1″ gas pipe guard rail	1.67		2,790
80	Mal. iron hand rail posts	23.00		1,840
20	st. carriages with tang. rollers	1,250.00		25,000
40	C. I. cup rollers	185.00		7,400
	Bolts			645
	Gas holder rivets			5,250
	Boiler rivets			9,300
	Total third section			376,710#

FOURTH SECTION 187′ 6″ DIA. BY 38′ 2″ HIGH.

STEEL CHANNEL.

589	ft. 10″ grip	30.0#	17,670#
591	ft. 10″ cup	25.0	14,772
4	ft. 3″ platform	4.5	18
	Total steel channel		32,460#

9570 STEEL ANGLE.

584	ft. 2½″ x 2½″ x 5/16″ grip gd	5.0#	2,920#
592	ft. 3″ x 2½″ x 5/16″ out. gal. angle	5.5	3,256
160	ft. 2½″ x 2½″ x 5/16″ 60 interm. gal. brkts	5.00	800
126	ft. 3″ x 3″ x ⅜″ 60 interm. gal. brkts	7.2	907
106	ft. 3″ x 3″ x ⅜″ 40 main gal. brkts	7.2	763
84	ft. 4″ x 3″ x ⅜″ 40 main gal. brkts	8.5	714
	Total steel angle		9,360#

SPECIAL STEEL BEAD.

586	ft. 2½" grip stif.....	4.25#	2,492#	
596	ft. 2½" cup stif.....	4.25	2,533	
	Total special steel bead...			5,025#

STEEL BAR.

220	ft. 2" x ⅝" cup rest blocks.....	4.25#	935#	
75	ft. 5" x ½" butts for gal. plts.....	8.5	638	
40	Base con. plates at legs for rollers..	17.0	680	
1520	ft. 17½" x ¼" 40 ribband pls....	14.86	22,587	
	Total steel bar.....			24,840#

FLANGED STEEL.

40	Butts for 10" channel.....	20.0#	800#	
160	In. & out. leg butts.....	5.3	843	
1556	ft. ¼" 40 vert. legs.....	14.70	22,877	
	Total flanged steel.....			24,520#
1520	ft. ⅜" steel (Carnegie) 40 out legs	17.75#		26,980#

9571

TANK STEEL.

1653	sq. ft. 5/16" grip sheet 34" w.....	12.75#	21,076#	
891	sq. ft. 5/16" cup sheet 18" w.....	12.75	11,360	
1090	sq. ft. ⅜" top shell 24" w.....	15.3	16,677	
1414	sq. ft. ⅜" bottom shell 30" w.....	15.3	21,634	
	5% for laps.....		3,537	
730	sq. ft. ⅜" gal. and platforms 15" wide	15.3	11,170	
	3% for waste.....		336	
60	Interm. gal. brkts. 5/16".....	17.5	1,050	
40	Main gal. brkts. ⅜".....	21.0	840	
	Total tank steel.....			87,680#

SHEET STEEL.

3134	sq. ft. 3/16" crs. next to top & botm. 35" w.....	7.65#	23,975#	
	5% for laps		1,195	
	Total sheet steel.....			25,170#

GAS HOLDER STEEL.

14915	sq. ft. No. 11 9 interm. crs. 37″ w.	5.1#	76,065#	
	5% for laps			3,800#
	Total gas holder steel			79,865#
1696	ft. 1″ dia. gas pipe 3 guard rails	1.67#		2,830#
80	Mal. iron hand rail poses	23.00		1,840
20	St. top carriages w. tang. rollers	1020.00		20,400
40	C. I. cup rollers	185.00		7,400
	Bolts			650
	Gas holder rivets			5,300
	Boiler rivets			9,200
	Total fourth section			363,520#

9572 FIFTH SECTION 190′0″ DIA. BY 37′8″ HIGH.

STEEL CHANNEL.

597	ft. 10″ grip	25.0#		14,925#

STEEL ANGLE.

592	ft. 2½″ x 2½″ x 5/16″ grip guard	5.0#	2,960#	
600	ft. 3″ x 2½″ x 5/16″ out. gal. angle	5.5	3,300	
160	ft. 2½″ 2½″ x 5/16 60 interm. gal. brkts	5.00	800	
126	ft. 3″ x 3″ x ⅜″ 60 interm. gal. brkts.	7.2	900	
600	ft. 6″ x 3½″ x ¾″ bottm. curb	22.3	12,380	
	Total steel angle			21,340#
594	ft. 2½″ special bead grip stif	4.25#		2,525#

STEEL BAR.

110	ft. 2″ x ⅝″ cup rest blocks	4.25#	468#	
75	ft. 5″ x ½″ butts for gal. plates	8.5	638	
601	ft. 9″ x ¾″ bot. curb	22.96	13,801	
1500	ft. 17½″ x ¼″ 40 ribband plates	14.86	22,290	
	Total steel bar			37,350#

FLANGED STEEL.

20	Butts for 10″ channel	20.0#	400#	
160	Butts for in. & out. legs	5.3	845	
1536	ft. ¼″ vert. legs	14.7	22,580	
20	Butts for 6″ x 3½″ angle	15.00	300	
	Total flanged steel			24,125#
1500	ft. ⅜″ steel (Carnegie) 40 out. legs	17.75#		26,625#

9573

TANK STEEL.

1675	sq. ft. 5/16″ grip sheet 34″ w.....	12.75#	21,356#	
1104	sq. ft. ⅜″ top shell 24″ w.....	15.3	16,891	
1343	sq. ft. ⅜″ bottom shell 29″ w.....	15.3	20,548	
	5% for laps.....		2,940	
737	sq. ft. ⅜″ gallery 15″ w.....	15.3	11,275	
	3% for waste.....		340	
60	Interm. gallert brkts. 5/16″.....	17.5	1,050	
	Total tank steel.....			74,400#

SHEET STEEL.

3000	sq. ft. 3/16″ ers. next to top & bot. 33″ w.....	7.65#	22,950#	
	5% for laps.....		1,150	
	Total sheet steel.....			24,100#

GAS HOLDER STEEL.

15137	sq. ft. No. 11 9 in[illegible]rm. ers. 37″ w.....	5.1#	77,200#	
	5% for laps.....		3,860	
	Total gas holder steel...			81,060#
1720	ft. 1″ dia. gas pipe 3 guard rails	1.67#		2,870#
20	Mal. iron hand rail posts.....	23.00		1,840
20	St. carriages w. tang. rollers....	605.00		12,100
40	Cast iron tank rollers.....	195.00		7,800
	Bolts			[illegible]0
	Gas holder rivets.....			5,300
	Boiler rivets			8,900
	Total fifth section.....			345,890#

9574 AIR & GAS PRESSURE FOR HOLDER.

Gas Pres. Taken at Bot'm of Tank. Spec. Grav. 600.

1″ pres.			Air pres.	Gas pres.	Deduct for buoyancy.
132,324	Sect. I.....	695,050#	5.25″	4.78″	62,496#
	Sect. I..... 695,050#				
	Water in cup..... 43,830				
	Sect. II..... 387,800				
136,026		1,126,680	8.28	7.59	93,910
	Sect. I & II..... 1,126,680				
	Water in cup..... 44,450				
	Sect. III..... 376,710				
139,778		1,547,840	11.07	10.17	126,200
	Sect. I, II & III.... 1,547,840				
	Water in cup..... 45,050				
	Sect. IV..... 363,520				
143,581		1,956,410	13.62	12.51	158,950
	Sect. I to IV..... 1,956,410				
	Water in cup..... 45,670				
	Sect. V..... 345,890				
147,835		2,347,970	15.89	14.59	191,750

IRON WORK FOR PERMANENT FRAME.

	Cast Iron:	
1	Interm. casting at center post.....	1,180#
1	Top do do	990
	Total cast iron	1,970#
89	lugs 6″ x 4″ x 5/16″ steel angle for posts...	1,030
96	washer bars 9″ x 7″ x ¼″ (steel).....	310
336	washer bars 9″ x 3″ x ¼″ (steel).....	650
	Bolts	1,400
	Rivets	50
	Total iron work for permanent frame..	5,410#

9575 LUMBER FOR PERMANENT FRAME.

Yellow pine	27,000 sq. ft.
Spruce pine	46,000 sq. ft.

LUMBER FOR SCAFFOLDING.

Spruce pine	88,000 sq. ft.

SUMMARY.

	Steel tank		1,789,950#
	Stairs for do		5,540
20	Standard supports		85,000
20	Truss standard guide frame		1,002,190
	Guide frame stairs		31,670
HOLDER:			
	1st section	695,050#	
	2nd "	387,800	
	3rd "	376,710	
	4th "	363,520	
	5th "	345,890	
			2,168,970
	Total holder, tank and guide frame.		5,083,320#
INLET & OUTLET PIPE:			
	4 Steel ducts	24,360#	
	4 30" steel stand pipes	21,290	
	C. I. pipes and fittings	46,600	
			92,250#
	Iron work for permanent frame		5,410
			97,660#
	Grand total		5,180,890#

LUMBER, PERMANENT FRAME, & SCAFFOLDING:

P. F. yellow pine	27,000 sq. ft.
P. F. spruce	46,000 sq. ft.
Scaffolding, spruce	88,000 sq. ft.

5,180,980# x 6.7¢ per ℔ = $347,125.66.

9576 COMPLAINANT'S EXHIBIT 377.

(For Identification.)

DANBURY, CONN., *November 22nd*, 1905.

W. H. Bradley, Esq., Chief Engineer Consolidated Gas Co.

MY DEAR SIR: The apparently simple questions left for me to answer by Mr. Wood, relative to the results of making oil gas in vertical retorts according to my plan, has led me into a perfect wilderness of figures and reports, extending over a period of 15 years. If Mr. Wood had struck in here about a week after starting; that is to say, about the middle of April, 1890, I could have told him all about it, right away, without any ifs, ands, or buts; but, when it comes to running one machine for 15 years, there's lots of things turn up. There's shortage of naphtha and oil to account for, there's cutting up of gas meters, big ones and little ones; there's leakage of gas to charge up against the machine; the ups and downs of the ther-

mometer, the hoppings of the barometer, the heighth above the sea, and the depth of human cussedness and neglect; now as the only way out of the maze, I shall, as you will see, charge them all up against the machine. There seems to be no other way out. I therefore send you a table of the performance since the beginning. The last six years' running has been on gas oil, with an occasional tank of Texas oil; the first nine years on naphtha. A salient feature is, that the machine is carbonizing more oil per hour under fire, and making more gas per hour than it did in the start; also that it has performed a little better on gas oil than on naphtha, but that is possibly due to improved handling. Under the head of naphtha gas made is included the gas used in purging out at the beginning and end of runs; the analyses will show more correctly the proportion of oil and water gas.

Yours very truly, H. H. EDGERTON.

9577 DANBURY, CONN., *Nov. 30th*, 1905.

W. H. Bradley, Esq., Chief Engineer Consolidated Gas Company.

MY DEAR SIR: I enclose you herewith, a copy of some of the analyses of the Danbury Gas, together with an account of the working for the past fifteen years. As before stated, on account of the loss and discrepancies of the naphtha and oil account I have reduced the results to the gallon of oil paid for.

As you might suppose this is a little hard on results from the machine, but under the circumstances, I shall have to stand it.

There is another question or two of Mr. Woods that I have not yet answered, but I will tackle them on my return from N. Y. the first of next week. I have been jogging the boys up to get themselves on dress parade, as the gas has been down a couple of candles, owing to a leak in one of the retorts, but I think they have it in hand, for I notice the gas went up to 36.4 candles, in spite of this cold snap today. What I want to do, is to make a series of analyses of the gas from gas oil, in connection with the yield; after testing the station meters and the small measuring tanks, and see what I can get out of the thing, by watching the running myself. I notice the men have got into a very comfortable way of running things, to suit their own convenience; for instance, when I told Mat the other day that he must keep square up to candle power, to show these New Yorkers what a fifteen old machine would do, he very coolly told me that he thought that 33 candle gas was good enough for anybody!

Yours very truly, H. H. EDGERTON.

9578 RESULTS FROM THE USE OF THE DANBURY PROCESS OF UPRIGHT RETORTS.

At Danbury, Conn., there has been in use since March, 1890, a setting of nine upright retorts, until the present time, November, 1905. The following is an account of the performance of this setting, in regard to the points indicated:

MI-TURE.

Year.	Naphtha used, gallons.	Naphtha gone.	Yield per gallon, cu. ft.	Coal per M.	Candle power.	Hours run.
1890.....	158,558	158,558	95.60	45.62	34.38	2,969.7
1891.....	162,565	162,600	101.49	45.63	35.30	2,352.0
1892.....	191,987	196,500	100.08	39.43	35.24	2,962.8
1893.....	164,330	172,480	98.48	41.11	35.83	2,301.2
1894	197,201	209,972	96.57	34.76	35.9	2,824.6
1895.....	107,026	217,603	93.98	40.09	34.96	2,909.7
1896.....	189,518	200,430	99.10	43.90	34.81	2,533.9
1897.....	192,211	208,880	108.73	40.47	35.42	2,426.6
1898.....	173,970	190,500	108.66	47.1	35.64	2,279.7
1899.....	180,798	212,379	106.61	42.84	35.54	2,581.1
1900.....	184,016	202,678	109.38	40.22	34.80	2,635.4
1901.....	204,493	218,190	116.59	37.29	34 40	2,961.5
1902.....	207,691	228,346	106.97	37.32	32.95	3,098.7
1903.....	213,568	238,237	106.17	32.12	33.43	3,351.8
1904.....	248,865	273,874	106.86	33.92	34.80	3,501.0
	2,876,797	3,091,227	103.68	40.12	34.89	41,689.7

REMARKS:—The yield per gallon of naphtha, or oil, is based upon the amount gone from stock, reduced to a temperature of 60 degrees Fahr., since the time the temperatures were recorded; namely, in 1893.

The use of gas oil began in September, 1899, and has continued since that period, with the exception of the fall and winter of 1902-1903 during which Texas oil was used.

9579 Gallons of naphtha carbonized per hour, Year 1891 .....69.0 gals.
Gallons of gas-oil carbonized per hour, Year 1904.....78.2 gals.
Gallons used per hour per retort, Year 1904..... 8.68 gals.
Size of retort, 12 in. diameter, 8 ft. long, area 31.4 sq. ft.

The candle power is determined by the use of a burner giving a fourteen candle flame; standardized by a burner giving a 22 to 25 candle flame, the rating of the gas would be raised to about 44 candles; or 8.8 candles per cubic foot instead of 7.5 candles.

ANALYSES OF DANBURY GAS MADE AT VARIOUS TIMES FROM 1889 TO 1896.

By Mr. C. H. Hinman, State Gas Inspector, for Massachusetts March 6th and 7th, 1889:

Illuminants	26.46
Marsh Gas	42.88
Hydrogen	18.38
Carbonic Oxide	8.50
Nitrogen	2.41
Oxygen	.09
Carbonic acid	1.28
	100.00

Gas made, 36,500. Naphtha used, 381 gals. Candle power (by 14 C flame)

Total yield per gal., 95.9 ck f. Yield of Naphtha gas per gal., 68.0 cu. ft.

Illuminants per gallon, 25.2 cu. ft.

ANALYSES BY H. H. EDGERTON.

	Dec. 25, 1892.	Dec. 22, 1892.	Oct. 26, 1895.	Feb. 3, 1896.	Feb. 7, 1896.	Feb. 7, 1896.	Nov. 28, 1892.
Carbonic acid	1.38	2.58	3.50	2.54	3.00	2.92	4.43
Oxygen	....	....	....	.46	.39	.21	....
Illuminants	22.27	19.31	20.82	20.30	23.60	23.40	.48
Marsh gas	45.05	33.80	37.72	41.16	39.15	39.06	1.27
Hydrogen	21.19	24.53	21.20	21.36	19.54	19.74	50.70
Carbonic Oxide	9.53	15.75	13.26	10.92	10.54	10.97	39.36
Nitrogen	.53	4.63	3.50	3.26	3.78	3.10	3.87
	99.95	100.6	100.00	100.00	100.00	99.40	100.11

9580 Yield per gal	73.2	79.0	75.6	76.5	81.9	81.9	"Blue Gas."
Illumin'ts pr. gal	24.2	28.8	26.9	25.3	30.8	30.8	
Ill't'g power	35.8	....	36.1	32.9	38.2	38.2	
Temperature	....	....	....	....	....	....	
At Sta. meter	....	....	70.0	59.0	63.0	63.0	
Naphtha used	....	....	....	....	....	....	

Naphtha gone from stock; no comparison can be made on this item, on one day's run; the fall of temperature, or rise, on a large stock of naphtha causes such a difference of volume, as to make comparison impossible.

TAR RESIDUE.

During the year 1904, there were 17,813 gallons tar burned under boiler.

During the year 1905, there were 21,319 gallons tar burned under boiler.

Gas oil gone from stock, 1903, 238,237 gallons; per cent. tar, 7.5% made.

Gas oil gone from stock 1904, 273,874 gallons; per cent. tar 7.7% made.

It is to be noted that the fiscal year ends May 31st, and the year as above named, is that in which the year ends.

DANBURY, CONN., *March 9th*, 1905.

Cost to manufacture gas at Danbury, Conn., year 1902-1903, the cost based upon the thousand cubic feet of 17.6 candle gas sold.

Thousands of cubic feet of 44 candle gas sold..... 21,273,000
Thousand- of 17.6 candle, based upon the light equivalent..... 53,183,915

At works.	Cost.	Cost per thousand 17.6 candles.	
For Fuel.....	$3,756.35	7.063 Cents.	
For lime.....	23.00	.043	
For Gas-oil.....	9,061.86	17.039	
For Gen'l Expense.....	2,131.20	4.007	
For Station Repairs.....	182.90	.344	
For Station Wages.....	4,098.43	7.706	
Total at Works....	$19,254.04	36.202	36.202 Cents.
9581 Distribution:			
For Dist'n Labor.....	$938.37	1.764	
For Tools.....	221.39	.416	
For Street Lamps.....	38.08	.072	
For Services Repairs.....	101.19	.190	
For Main Repairs.....	108.76	.204	
For Insurance.....	266.05	.500	
For Meter Repairs.....	256.44	.482	
Total Distribution.	$1,930.23	3.628	3.628
Management:			
For Salaries	$3,772.08	7.093	
For Rent.....	428.54	.806	
For Office Expense.....	468.00	.880	
Total Management.	$4,668.62	8.779	8.779
For Bad Debts.....	449.86	.846	.846
For Taxes.....	1,112.87	2.093	2.093
For Depreciation.....	2,534.84	4.766	4.766
For Dividends (Gas).....	7,875.00	14.808	14.808

Total cost of Gas per 17.6 candle M, including interest..... 71.122 Cents.
Gas Bills, Less Discounts, $58,849.10; per M, sold 110.657 cents..... 110.657 Cents.
Surplus, Gas receipts over expenses, depreciation and interest, $21,023.59..... 39.535

9582 RESULTS AT DANBURY, CONN., FROM THE SETTING OF NINE UPRIGHT RETORTS.

Month. 1890.	Naphtha used.	Naphtha gone.	Naphtha gas per gallon.	After water gas added.	Coal per M.	Candle power.	Hours run.
April	8,999	.....	69.3	98.3	.....	34.5	368.4
May	9,761	.....	76.2	94.2	66.2#	35.0	239.4
June	8,086	.....	75.3	105.1	46.2	37.1	202.7
July	7,922	.....	75.3	110.5	49.8	34.7	158.0
August	9,591	.....	76.4	112.8	48.1	32.6	221.0
September	12,897	.....	77.7	99.5	39.1	33.0	260.0
October	13,993	.....	80.0	106 8	48 0	35.1	279.0
November	14,733	.....	78 9	102.7	42.7	33.6	281.0
December	16,301	.....	78.3	100.1	39.0	32.8	318.0
January	19,815	.....	73.6	87.7	41.5	32.1	349.3
February	17,046	.....	75.3	90.7	38.2	34.1	279.7
March	15,442	15,460	73.0	85.8	53.8	34.3	275 5
April	11,863	11,749	75.6	94.8	53.9	36 7	186 9
May	10,868	10,974	70.8	97.6	53.9	36.5	158.6
	158,558	.....	75.92	95.69	45.62	34.38	2,969.7

Nap. Gas, 12,241.2 M. Total Gas, 15,462.9 M. Generator Coal, 705,600#

1891.							
June	9,745	10,131	74.3	106.8	54.7	37.6	130.6
July	9,373	9,468	77.2	108 3	53.6	35.6	121.1
August	10,965	10,808	76.3	108.0	50.5	35.8	152.7
September	11,978	12,260	71.9	106.3	47.2	35.8	160.0
October	15,204	15,459	71.8	100.3	41.5	35.3	209.2
November	15,512	15,630	76.5	98.0	39.2	34.3	221.0
December	18,632	17,890	71.3	94.8	39.2	34.1	272.8
1892.							
January	19,018	18,960	75.2	95.8	38.8	33.7	287.7
February	15,599	15,594	74.9	99.7	49.4	36.1	243.4
March	14,270	14,290	78.5	103 3	40.7	35.8	221.4
April	11,399	11,370	77.8	102.4	56.0	35.1	171.5
May	10,868	10,700	81.7	106.8	62.1	34.3	160.6
	162,565	162,600	75.27	101.49	45.63	35.3	2,352.0

Naphtha gas made, 12,241.2; total gas made, 16,503.6; coal used, 753,200 #

9583

Month. 1892.	Naphtha used.	Naphtha gone.	Naphtha gas per gallon.	Gas total.	Coal per M.	Candle power.	Hours run.
June	10,986	11,535	81.9	108.5	45.6	35.8	168 0
July	12,515	12,680	79.5	106.1	42.5	34 0	204 7
August	15,186	15,512	76.7	102.2	38.5	34.7	250.8
September	17,684	18,088	72.1	97.2	37.5	35.7	288.5
October	18,335	18,949	78.0	101.2	34.5	34.2	201.8
November	18,613	19,468	83.3	105.2	34.0	34.4	280.2
December	21,032	20,413	78.1	97.8	37.3	35.3	315 2
January	18,827	18,990	80.3	98.5	41.6	35.6	285 9
February	16,404	17,040	79.4	98.4	36.2	35.8	245.9
March	16,134	16,123	77.2	96.5	45.5	34.5	235.6
April	13,843	14,390	75.3	99.8	46.0	36.7	211.2
May	12,429	13,300	80.6	108.0	46.0	36.2	185.0
	191,987	196,506	78.72	100.08	39.43	35.24	2,962.8

Nap. gas made, 15,114.0; total gas made, 19,370.7; coal used, 763,900#

RESULTS AT DANBURY, CONN., FROM WORKING OF NINE UPRIGHT RETORT SETTING.

Month. 1893.	Naphtha used.	Naphtha gone.	Naphtha gas made.	Total gas made.	Temp. Fahr., degrees.	Coal used M.	Candle power.	Hours run.
June	10,286	10,530	84.3	113.9	75.9	52.3	36.2	155.0
July.....	9,273	10,020	84.6	114.6	80.9	53.3	37.0	131.8
August	10,814	11,680	85.5	116.6	79.6	51.5	36.1	147.9
September..	14,386	15,240	81.6	109.9	7 .3	39.4	35.1	203.8
October	15,336	15,720	82.5	110.5	74.0	37.5	36.2	219.4
November..	15,729	16,080	79.4	108.2	64.9	37.6	34.4	222.6
December..	15,772	16,730 Station meter cleaning, est'd					35.2	215.8
January....	16,999	16,730	77.4	97.6	68.9	39.7	35.6	230.2
February...	16,099	17,390	79.3	102.5	83.8	34.3	35.9	228.1
March	16,369	17,620	81.3	109.2	85.1	35 8	36.9	226.4
April.....	12,776	13,730	89.4	110.5	89.4	41.1	36.9	176.8
May	10,531	11,010	83.5	112 8	80.5	46.4	34.5	143.4
	164,330	172,480	80.08	107.01	77.12	41.11	35.83	2,301.2
Yield on naphtha gone			76.99	102.1				
Corrected to 60 deg. temp.....			74.26	98.48				

Nap. gas made, 13,279.4 M; total gas made, 17,606.7; coal used, 723,800 #

9584

1894.								
June	9,354	9,940	85.6	113.2	86.8	49.2	36.4	123.7
July.....	9,928	10,890	86.0	118.4	91.4	51.1	37.2	134.5
August.....	15,390	16,410	86.5	109.9	89.2	35.1	37.1	207.6
September..	17,458	18,590	86.8	115.2	88.5	31.6	37.1	238.7
October....	19,305	19,420	77.7	111.2	77.7	27.5	35.4	263.7
November..	19,797	22,460	75.4	104.3	60.5	26.2	33.6	277.5
December ..	21,004	22,550	75.4	101.9	64.7	31.0	34.6	295.1
January	21,118	22,350	80.8	101.3	66.0	31.5	34.6	297.7
February....	18,160	19,113	77.8	97.2	68.6	33.0	34.6	252.5
March.....	18,268	19,450	79.5	100.8	73.2	35.4	35.8	363.6
April.....	15,312	15,710	79 2	102 4	77.9	39.1	37.2	208.0
May.....	12,107	13,100	87.2	112.2	80.7	44.4	37.2	162.0
	197,201	209,973	81.13	106 57	77.1	34.76	35.9	2,824.6
Yield pr. gal. on Nap. gone.....			76.24	100.07				
Corrected to 60 deg. temp.....			73.53	96.57				

Nap gas made, 16,099.9; total gas made, 21,015.5; coal used, 730,500 #

1895.								
June	10,163	11,210	89.7	116.7	84.5	50.4	38.3	137.4
July.....	12,383	13,130	86.3	113.3	87.4	48.0	36.4	161.2
August.....	15,825	17,610	85.2	111.4	87.7	37.4	36.7	210.1
September..	19,395	21,070	77.2	101.0	79 8	32.6	34.6	265.2
October.....	20,550	21,070	77.2	101.8	71.7	31.2	36.0	277.4
November..	19,495	20,940	79.4	103.6	71.0	34.3	35.1	257.6
December ..	21,533	19,290	74.9	95.3	69.0	38.6	32.9	317.9
January	22,138	23,040	75.8	96.8	67.5	40.4	35.3	302.8
February...	19,478	20,763	.....	100.0	63.9	37.2	33.0	276.2
March.....	19,074	19,990	.....	95.2	61.3	41.2	33.0	269.5
April.....	15,083	15,770	.....	97.1	64.7	48.2	33.0	245.9
May.....	11,909	13,260	.....	103.4	73.6	52.3	34.2	198.5
	207,026	217,603	.....	96.69	73.5	40.09	34.96	2,909.7
Yield pr. gal on Nap. gone.....				96.69				
Corrected to 60 deg. temp.....				93.98				

During Feb., Mar., April and May, gas oil was used; oil and water gas together.

9585 RESULTS AT DANBURY CONN., FROM SETTING OF NINE UPRIGHT RETORTS.

Month. 1896.	Naphtha used.	Naphtha gone.	Total gas made.	Temp. Fahr., degrees.	Coal used per M.	Candle power.	Hours run.
June	10,056	11,650	112.5	76.3	59.30	35.0	178.7
July	12,703	14,710	103.7	80.8	53.0	34.6	185.9
August	13,229	13,380	110.7	81.7	57.8	36.7	169 7
September	15,824	16,490	107.9	73.3	51.2	35.2	198.0
October	17,135	18,410	102.9	65.0	53.9	33.2	221.5
November	16,534	17,690	108.4	65.0	49.0	34.6	217.6
December	19,725	20,970	105 4	61.8	45.2	33.2	263.6
January	20,923	19,530	103.9	58 2	43.3	33.7	287.2
February	18,038	19,290	105.8	60.6	44.2	34.8	238.1
March	18,532	19,310	106.6	65.9	42.2	33.8	239.3
April	14,681	15,780	110.6	73.2	48.3	35.2	181.4
May	12,138	13,220	113.4	78.4	56.3	36.7	152.9
	189,518	200,430	107.14	70.02	43.90	34.81	2,533.9
Yield pr. gal. of Naphtha gone			101.31				
Corrected to 60 deg. temp			99.10				

Total gas made, 20,306.7 M.; coal used, 991,300 #

1897.							
June	10,901	11,960	121.6	80 0	55.3	36.3	134.2
July	12,025	13,300	126.6	83.5	51 7	35.5	153.4
August	14,690	16,050	126.3	80.5	45.5	35 7	184.8
September	17,880	16,830	123.8	79.5	42.2	35.0	218.5
October	17,708	19,290	124.9	70.0	37.7	34.8	233.7
November	18,958	20,410	115.9	74.0	41.0	34.1	257.1
December	20,324	22,810	122.6	76.4	34.4	34.5	261.3
January	20,646	22,040	126.5	83.5	32.4	35.0	253.9
February	17,802	19,070	124.9	82.0	31.9	33.8	212.3
March	16,788	17,820	122.2	72.3	34.0	34.2	198.9
April	13,947	14,840	115.9	68.2	38.5	36.0	172.3
May	10,542	11,460	128.6	72.2	60.6	40.2	146.2
	192,211	208,880	122.51	77.08	40.47	35.42	2,426.6
Yield on Naphtha gone			112.73				
Corrected to 60 deg. temp			108.73				

Total gas made, 23,547.9 M.; coal used, 953,000 #

9586

1898.							
June	9,502	10,280	127.6	81.5	58.2	38.1	125.1
July	11,135	12,780	125.7	83.6	51.3	35.9	146.5
August	12,809	14,010	130.9	81.8	46.0	37.6	169.5
September	15,057	16,950	131.7	80.0	43.0	37.7	196.0
October	15,706	16,755	119.6	.....	45.2	36.4	208.0
November	16,417	18,375	116.0	65 0	45.3	34.1	207.0
December	18,175	19,515	116.8	74.0	41.9	33.5	240.5
January	18,186	20,000	119.2	65.0	43.8	34 8	234.9
February	16,244	17,740	118.4	65.0	41.7	33.4	220.7
March	16,889	18,540	123.1	70.0	44.2	34.2	218.6
April	13,202	13,795	125.3	83.0	49.2	36.2	171.8
May	10,647	11,760	128.4	79.0	61.2	36.0	141.1
	173,970	190,500	122.3	75.21	47.1	35.64	2,279.7
Yield pr. gal. of Naphtha gone			111.22				
Corrected to 60 deg. temp			108.66				

Total gas made, 21,298,240 cu. ft.; coal used, 1,001,300 #

RESULTS AT DANBURY, CONN., FROM SETTING OF NINE UPRIGHT RETORTS.

Month.	Naphtha used.	Naphtha gone.	Yield gas per gal.	Temp. Fahr., degrees.	Coal used per M.	Candle power.	Hours run.
1899.							
June	10,439	14,835	133.9	90.0	57.0	37.5	136.3
July	14,455	17,700	134.2	91.0	58.8	37.3	146.8
August	13,050	10,130	134.4	87.0	50.7	37.4	176.0
September	14,354	17,765	131.7	83.0	42.7	37.2	190.6
October	16,761	16,735	130.6	80.0	38.3	35.7	238.4
November	17,769	19,520	125.6	70.0	40.7	33.9	261.4
December	20,332	18,000	120.1	65.0	34.5	31.8	313.3
January	21,146	25,000	120.3	67.0	34.6	32.8	322.6
February	17,044	19,725	128.0	69.0	36.8	34.7	237.8
March	16,293	20,204	130.1	69.0	38.5	34.6	226.4
April	12,063	20,875	141.9	80.0	45.7	37.3	171.0
May	10,092	11,890	145.3	74.0	53.0	35.4	151.5
	180,798	212,379	130.0	77.08	42.84	35.54	2,581.1
Yield per gal. Naphtha gone			110.52				
Corrected to 60 deg. temp			106.61				

Total gas made, 23,472.9 M.; coal used, 1,005,700 #

9587

1900.							
June	10,312	12,385	139.5	82.0	50.0	36.3	147.0
July	10,300	12,775	154.9	86.0	49.2	36.2	149.8
August	11,976	15,055	152.3	83 0	45.5	34.9	174.1
September	14,545	14,667	134.6	79.1	41.2	33.8	204.5
October	16,517	17,500	132.6	71.0	36.9	35.2	228.4
November	17,821	18,974	126.0	71.0	37.4	34.3	249.5
December	20,768	21,760	126.3	89.0	34.5	34.0	293.1
January	20,352	21,352	119.1	83.0	35.6	34.4	290.4
February	17,226	20,650	126.1	84.0	35 5	34.0	260 0
March	18,292	18,670	122.8	69.6	33.6	33.1	271.9
April	13,707	16,090	127.9	71.5	44.8	34.8	194.8
May	12,100	12,800	132.1	79.7	47.8	36.4	171.9
	184,016	202,678	132.9	79.07	40 22	34.8	2,635.4
Yield per gal. gone			113.88				
Corrected to 60 deg. temp			109.38				

Total gas made, 24,082 M.; coal used, 968,600 #

1901.							
June	11,620	12,840	138.2	94.6	45.10	35.7	166.6
July	12,450	13,060	138.1	98.8	45.47	35.7	182.2
August	14,572	15,540	135.4	81.7	42 4	34.9	207.6
September	15,737	17,250	132.0	74.0	33.7	34.5	214.2
October	19,446	20,430	129.7	68.8	31.7	32.8	281.4
November	19,980	22,300	124.5	61.5	22.2	31.5	275.9
December	23,293	25,480	124 6	63.1	29.9	33.0	234.5
January	23,951	27,020	115.4	59.8	31.2	34.7	362.5
February	18,155	19,020	122.1	58.5	37.7	33.3	283.8
March	18,162	16,760	126.1	67.8	38.0	34.5	272 6
April	14,744	15,463	130.9	70.9	43.3	35.8	207.1
May	12,363	13,030	134.6	78.2	50.9	35.8	173.1
	204,493	218,190	127.9	73.14	37.29	34.4	2,961.5
Yield per gal. Nap. gone			119.86				
Corrected to 60 deg. temp			116.59				

Total gas made, 26,152. M.; coal used, 975,400 #

9588 RESULTS AT DANBURY, CONN., FROM SETTING OF NINE UPRIGHT RETORTS.

Month.	Naphtha used.	Naphtha gone.	Yield gas per gal.	Temp. Fahr., degrees.	Coal used per M.	Candle power.	Hours run.
1902.							
June	11,620	12,820	136.13	85.5	47.3	35.3	159.0
July	13,489	14,490	134.6	87.2	41.6	36.1	191.9
August	13,307	14,450	132.3	84 9	38.3	35.7	191.3
September	15,565	16,930	128.2	75.2	38.3	34.5	234.3
October	18,667	19,210	124.9	70.0	41.2	32.7	289.7
November	19,840	20,680	121.0	63.9	32.3	31.9	309.6
December	25,299	26,930	107.2	64.2	29.3	30.4	387.4
1903.							
January	24,618	25,746	104.7	63 6	29.2	34.6	379.2
February	18,354	19,500	120.1	72.7	34.5	34.6	269.3
March	18,582	20,210	131.0	76.3	33.6	34.0	280.2
April	15,849	16,826	119.5	66.2	42.3	32.3	231.5
May	12,643	13,390	130.3	75.0	39.6	35.9	195.3
	207,691	228,346	121.1	73.8	37.32	32.95	3,098.7
Yield per gal. Nap. gone			110 14				
Corrected to 60 deg. temp			106.97				

Total gas made, 25,151. M.; coal used, 938,600#

1903.							
June	13,254	13,880	129.7	80.0	38.1	33.9	185.3
July	14,071	15,070	129.4	75.7	35.0	35.0	196.8
August	17,028	17,630	126.1	81.4	31.7	33.6	242.0
September	18,292	19,690	124.0	76.8	28.8	34.4	253.5
October	21,982	22,660	124.2	79.0	26.0	32.7	318.0
November	22,740	26,670	116.9	75.0	29.8	32.0	340.2
December	24,675	26,638	120.9	60.0	29.1	31.4	338.2
January	24,108	25,625	115.2	67.0	33.0	32 8	343.7
February	22,180	24,137	113.0	63.0	34.5	pipe frozen	328.4
March	23,077	27,446	104.6	65.0	35.8	31.3	332.0
April	17,447	20,308	111.7	73.0	40.5	33.2	246.1
May	14,910	14,717	121.3	74.0	41.9	37.4	207.6
	213,568	238,237	122.0	72.49	32.12	33.43	3,351.8
Yield per gal. Nap. gone			109.0				
Corrected to 60 deg. temp			106.17				

Total gas made, 25,966.0 M.; coal used, 844,200#

9589

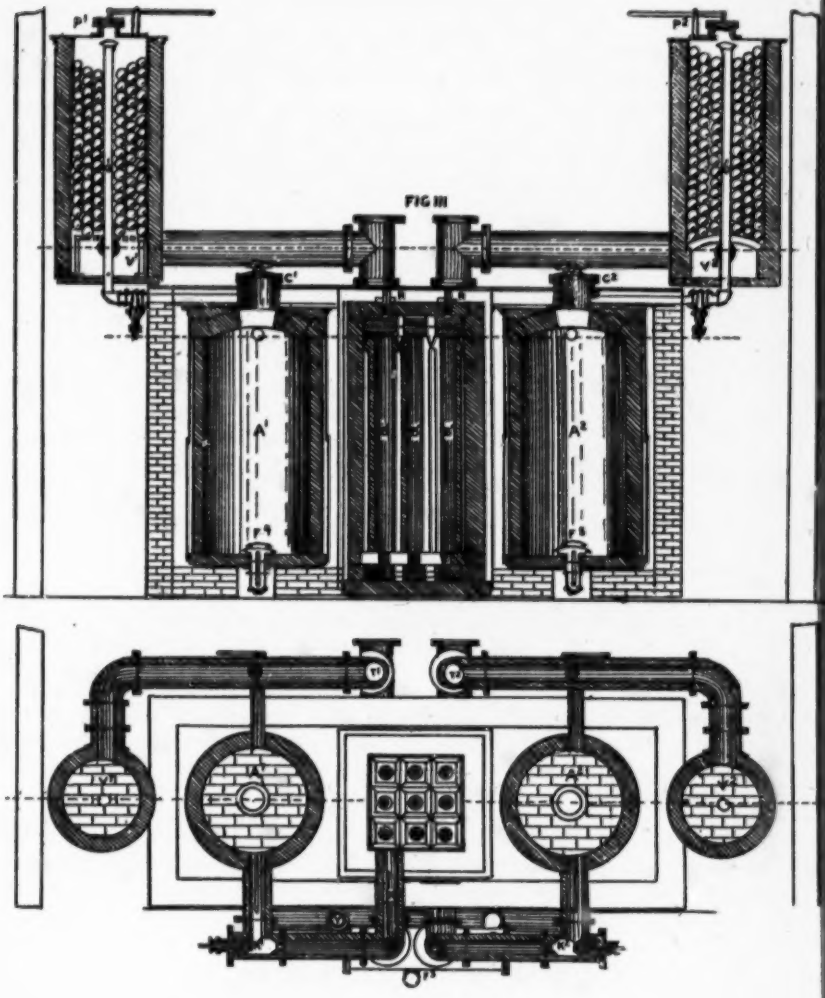
1904.							
June	13,933	15,923	125.3	76.0	45.2	39.0	205.1
July	14,512	16,750	128.5	85.0	38.8	37.2	207.4
August	15,836	18,276	136.8	86.0	36.8	35.9	223.3
September	18,981	21,388	125.7	80.0	32.1	32.3	261.4
October	23,768	24,671	115.8	60.0	29.9	34.0	329.0
November	25,687	28,866	113.9	67.0	28.1	31.2	380.4
December	29,523	32,216	117.2	57.0	29.7	34.4	416.8
January	28,423	32,800	117.1	63.0	29.4	34.5	405.7
February	22,722	25,265	120.0	61.0	37.7	33.4	319.4
March	22,508	24,057	120.1	67.0	34.4	34.6	300.0
April	18,062	19,436	123.1	69.0	36.4	34.7	250.3
May	16,992	18,558	126.9	72.0	34.7	36.4	222.2
	248,865	273,874	120.9	70.25	33.92	34.8	3,501.0
Yield per gal. Nap. gone			109.16				
Corrected to 60 deg. temp			106.86				

Total gas made, 30,987. M.; coal used, 1,020,500#

(Here follows diagram marked p. 9590.)

2592A

9590



WITNESSES

Benj. W. Cowperthwait
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9591 MAXIMUM RESULTS.

The enquiry has been made as to the maximum results that have been attained by the employment of the upright retort. In view of the want of balance between the oil used, and that gone from stock, there is some difficulty in arriving at any statement of maximum results, that will be free from criticism. Looking only at those from the use of gas oil within the last few years, it will be noted that during a number of months the statement of oil used, and that gone from stock come to a reasonable agreement. Among these may be noted the following:

May 1901	12,363	13,030	134.6	78.2	35.6
June 1903	13,254	13,880	129.7	80.0	33.9
Aug. 1903	17,028	17,630	126.1	81.4	33.6
May 1903	14,910	14,717	121.3	74.0	37.4
	57,555	59,257	511.7	313.6	138.5
Mean			127.9	78.5	34.6
Yield, based on oil gone			124.1		
Reduced to 60 deg. temp			119.5		

Per cent. of illuminants, on the average required for 34.6 candles, is 21.3%.

This, into yield per gallon, equals 25.45 cu. ft. of illuminants per gallon.

While this result can hardly be looked upon as a maximum, as it is the average of four months of working, during which the disagreements between the oil gone from stock, and that measured in the small feed tanks, had come to a minimum. The result is also based upon the oil gone from stock.

A fairer statement of an average maximum may be taken from a test made at Wallingford, in October and November, 1884; this was as far as the writer is aware, the first use of "gas oil," then called intermediate oil, ever made.

9592 The average result was: 107 cubic feet per gallon of 39.95 candle gas, tested according to the Danbury method; that is by ascertaining the durability of a 14 candle flame from 2 cu. ft. of gas. Pro rata yield, at 35 candles, 122.1 cu. ft.; per cent. illuminants, due 35 C. gas, 22.59 per cent.; per cent. of illuminants by yield, in cu. ft. per gallon, 22.59 x 122.1, gives quite approximately cu. ft. illuminants per gallon, 27.6.

MAXIMUM RESULTS FROM GAS OIL.

At Wallingford with Upright Retorts.

Nov. 1st, 1884, yield per gallon 124.5 cu. ft. of 39.72 candle gas.
Pro rata yield of 35.0 candle gas, equal 141.3 cu. ft.
Illuminants required in average 35.0 C. gas, equal 22.59 per cent.
Illuminants per gallon, 141.3 x 22.59 equal 31.8 cu. ft. per gallon.

During the above test, of which a copy is enclosed, the meters were tested, the water level was carefully adjusted and kept correct by means of an overflow, connected with inlet of the meters. There were two meters used, one for the oil gas and one for the water gas.

There was no analysis made of this gas, but analyses made subsequently of gas made from gas oil by the Wallingford machine gave as follows, December 1st, 1892:

	%
Carbonic acid	3.00
Illuminants	27.92
Carbonic oxide	16.14
Marsh gas	30.74
Hydrogen	18.82
Nitrogen	3.33
	99.95

9593 This gas shows the higher ratio of illuminants to marsh gas, which obtains from the gas made from gas-oil, and with the smaller diameter retorts.

It is obvious, that the short runs made during the Wallingford test, were not favorable to uniformity of results, and it is not at all surprising that the results differ. It is to be noted that in this case the water gas did not go through the oil gas retorts, but was drawn off entirely separate; therefore the result is got from oil without the so called preserving effects of the water gas.

The above test of gas oil was undertaken at the instance of Mr. Warden of the U. G. I. Co., and is to be noted as the first successful use of that quality of oil. Tests with the Lowe machine in use at that time had proved unfavorable.

GAS OIL TEST
AT
WALLINGFORD, CONN.

Water gas
Oil gas + Water gas
1884

Date		Time Started	Time Ended	Time Run	Oil Used	Oil Gas Made	Water Gas Made	Water & Oil Made	Yield per Gal. Oil Gas	Yield per Gal. Water Gas	Quality of Oil Gas	Quality of Water Gas
				H. M.	Gals.							
Oct.	29	3.00 PM	5.00 PM	2.00	30	1940	1220	3160	64.6	105.3	39.67	3.80
"	30	2.30 "	5.05 "	2.35	38	2450	1830	4280	64.4	112.6	40.26	3.48
"	31	1.30 "	5.15 "	3.45	42	2580	1830	4410	61.4	105.0	40.53	3.81
Nov.	1	1.30 "	3.50 "	2.20	31	2110	1750	3860	68.[illegible]	124.5	39.72	3.21
"	2	2.20 "	4.30 "	2.10	35	2330	1050	3380	66.6	96.6	41.24	4.14
"	3	3.05 "	3.40 "	0.35	12	750	666	1416	62.5	118.0	38.50	3.33
"	4	2.30 "	4.45 "	2.15	24	1460	1250	2710	60.8	113.0	38.81	3.34
"	5	1.30 "	5.30 "	4.00	46	2920	2180	5100	63.5	111.0	40.83	3.60
"	6	2.15 "	4.20 "	2.05	31	2000	1240	3240	64.5	104.5	40.32	3.83
"	7	2.00 "	5.30 "	3.30	40	2540	1660	4200	63.5	105.0	39.62	3.81
"	8	1.30 "	4.50 "	3.20	40	2620	1450	4070	63.9	99.3		4.03
"	9	12.45 "	3.45 "	4.00	38	2490	1580	4070	63.5	107.1		3.73
Totals & Averages				32.35	408	26190	17706	43896	64.2	107.6	39.95	3.72

4.3 - Candles per gal.

9.29 gals per ~~[illegible]~~ of 39.95 C.

9594 THE DANBURY PROCESS OF GAS MAKING.

The Danbury method of carbonizing oil vapors consists essentially in setting the retorts on end, preferably of cylindrical shape, and the retorts are open, the full diameter both at top and bottom. The setting is heated by "producer gas"; the current of combustible gas travelling from the top downwards; the secondary air for the burning of the gas, is introduced into the top of the setting. The oil or bituminous vapors are turned loose into the common chamber, beneath the lower ends of the retorts, and find their way upward through the retorts, becoming decomposed into fixed gases, on the way up. The theory of the process depends upon the fact that the resultant gases are much lighter in gravity than the vapors from which they are made; not only that, they are made much hotter on the way through the retorts. From this fact, it is supposed that each retort will draw in proportion to its capacity to heat and gasify; it is supposed that each retort will deliver at the upper end, gases of uniform weight and composition; that in the transit through the retorts the gases and vapors are in perfect equilibrium, and that signifies that they are in all parts proportionally and equally heated, and that being equally heated, decomposition into lighter gases will take place in each retort uniformaly. Although the ascending vapors, which are in immediate contact with the sides of the retort, receive heat in proportion to the square of the distance, inversely, yet it is impossible to suppose the superheated vapor will remain in that position; there is a constant eddying inwards of the heated vapors, as may be seen in fluids under similar conditions. It is practically noticeable that the transition from tarry matter to carbon is sharper and more definite in the case of these vertical re-
9595 torts, than is the case with horizontal retorts. Neither is there required in the case of vertical retorts, a "carrier," as it is sometimes called to preserve the vapors from overheating, or to sweep them out, as it is termed; the extra levity of the "cooked" gases, performs this service. That the action takes place in the manner described is perfectly observable to any one who is practically acquainted with the operation of the upright retort; and if a correct proportion of length to diameter in the retort were observed it is probable that neither tar nor carbon would be formed in the operation of gasifying. It is probable that the length of the Danbury retorts could be increased somewhat in the use of the intermediate, or "gas oil," with improved results. It has been already noted in the case of the lighter oils, that nearly the total weight of the oils appeared in the form of the resulting gases. It has also been noted that by the use of a smaller diameter retort that the results from gas oil, in the shape of gas, and total luminosity of the gases was materially increased. During the first nine years of service of the Danbury setting the naphtha gases and the water gases were led off separately; that is, there was no water gas sent through the upright retorts along with the naphtha gases. The results during that period can be taken as a demonstration of the

feasibility of sending the vapors through the heated retorts without being "carried" or swept out by an inert, and non-decomposable gas. It is altogether probable that the presence of an inert gas is required in the use of the various superheater systems, heated by direct internal heat, for the reason that there is no ready escape for the cooked gases; and besides the heat at the beginning must be considerably higher than at the end of the operation. Also, in
9596 the use of horizontal retorts, there seems to be an actual advantage in the use of an inert gas, in order to save from overheating, the hydrocarbon vapors; the inert, or non-decomposable gases being lighter than the vapors, can generally be supposed to take the upper part of the retort, or even if supposed to be so thoroughly mixed that no practical separation by gravity takes place, still the effect of dilution will necessarily be preservative, in lessening the time of exposure and intimacy of contact with the heated surface. Judging by the practical results from the working of this Danbury system, it must be admitted that the advantage of allowing the gases to rise freely by the force of increased levity, is fully established, for the results from retorts set horizontally and used without the intervention of inert gases are far below those shown in quality and quantity and regularity. It is notable in the use of the Danbury retorts, no such thing as a stopped retort had occurred during a period of twelve years' use, or until the use of Texas oil was begun; and only then through the inexperience of the men in the handling of such oils. During all this time no especial steps had to be taken to burn out or clean out carbon in the retorts; the ordinary reversals of blast and heating up being sufficient to keep them clean, and it is doubtful in view of the construction, if even that was necessary, to keep the inside of the retorts clean. Each retort was provided with a sight hole for the purpose of watching the heats, and the condition of the retorts, and such was the regularity of the heating under the system that the custom of inspection fell into disuse for years at a time, the practical handling being carried on by the clock, the blast pressures and the color of the issuing gas from a test cock. The machine has run from the starting in 1890, until the present time without letting
9597 down, and such alterations or improvements that have from time to time been made, have been accomplished without letting down the heats, and without any essential repairs. There have been introduced since the start some improvements in running, which in the aggregate have been of considerable importance, and which in the starting of a new machine could be availed of at once, to the considerable advantage of results. As an instance, the method of stopping leaks in the setting was an afterthought, and was of great importance, particularly as to those in the bottom joints, with which in the usual operation of the work, only the hydrocarbon vapors came in contact.

In fact the operation as a process was being continually made over, to suit the different oils, and, as shown by the results, that a fifteen-year-old machine is doing superior work, with an inferior and cheaper quality of oil than at the outset. For instance, the first year's running on naphtha took a gallon of material for 95.69 cu.

ft. of average 34.38 candle gas, while the year ending May 31st, 1905, required a galion of gas-oil (gone from stock) for 106.86 cu. ft. of average 34.8 gas. It may as well be stated at this point, how the photometry of this gas has been determined and entered in the accounts.

Photometric methods used at Danbury, in reporting candle power. This is an important point, because it is a well-known fact that poor gases can be rated a higher and rich gases at a lower value than is practically obtained by the consumer, even with the best and most suitable burners in each case. The whole matter rests on the fact that the same gas can obtain different ratings, per five cubic feet, according to the greater or less candle power of the flame used to obtain the rating. For instance, if a three-foot rate of con-
9598 sumption is obtained and tested with a suitable flat flame, and a five-foot rating of the gas given thereby, it will give a decidedly inferior rating to the gas than if burned in a suitable burner at the rate of five feet. For the above reason it was determined to standardize the Danbury gas by a standard candle power flame, and the power of the flame was put at fourteen candles, because at that time, 1879, it was the actual five-foot rating of the gas in use (coal gas). The Danbury gas can be actually burned, and is so used by many customers in flames of 30 to 33 candles. There was no obligation to standardize by so small a flame as 14 candles, save the facility it gave for comparison with the former gas, coal gas. Standardized with a 22 to 25 candle flame the pro rata candle power of Danbury gas is raised from 14 candles for 2 c. f. rate to 17.6 candles for a 2 c. f. rate; and this is the actual comparative value of the gases when with gases using as high as a 22 candle flame to standardize. The Danbury system of testing is practically the same in principle as the system used in Paris, and is carried out in practically the same way, only substituting a 14 candle flame instead of a "Carcel." The rating instead of being reported in litres per hour to give a "carcel," is reported in number of minutes; two cubic feet of gas will last while giving a fourteen candle flame. This system of testing has been introduced into England, after years of haggling, and now legalized. The system was introduced at Danbury in 1879; or, I believe, five years before its advantages were fairly described in an English publication. No particular originality is pretended for it, but it certainly does away with the troublesome incongruity of photometric results, and moreover places the rating of greatly differing qualities of gas on an eminently practical
9599 as well as scientific basis. With the advent of the Welsbach burner into practical use, came an itching desire to lower quality all round, and along with it came this long suspended recognition of the superior advantages of the improved photometry. Is it possible that scientific thought is entirely moulded by pecuniary considerations? Gas below standard was ill treated by the old 5 cu. ft. an hour plan; Welsbach brought a desire for lower standards to please pocket; pocket wants improved photometry, and gets it; science couldn't, except among "monkeyfied" Frenchmen; pocket beats science in the domain of science! This is a good place

for a word about candles per gallon of oil. Whoever invented the method of rating results from oil in candles per gallon; his name remains unknown. Sensible people took to using it, in the same fashion that scholars are sometimes pleased to use slang. No one seems to know who invented the "French system" of measuring electric lights, so long in use, but it is shrewdly suspected that the candles per gallon man and the French system arc man is either one and the same person or of the same family. Neither practice has any real basis, but both serve a commercial purpose. It will be conceded that the gas product from one gallon of oil, added to 1,000 feet of water gas would give no light, nor would two gallons give any sensible light, not until four gallons per thousand is reached does the light become a practical quantity; the addition of the 5th, 6th and 7th gallon give each an increase per gallon, where the light is tested by the method of equal flame powers in each case. Different experimenters might differ slightly as to the point where a maximum effect was to be obtained from a given quantity of oil, but by using the equal flame power method of photometry the difference would be slight.

9600 FUEL REQUIRED.

As to the fuel required to make a thousand feet of the pure oil gas, the records of operations give us only a clue. During October, 1903, there was required, in the cupolas, 26# per thousand. This amount of coal furnished the heat for making about 700 feet of oil gas, as well as the fuel and carbon for 309 feet of water gas; the latter could not probably have been less than 15# leaving 11# per thousand for seven hundred feet of oil gas, together with the fuel necessary for blowing up a heat to make up for an average of 460 hours lying off during the month.

REGULARITY.

While the quality has generally averaged above the point stipulated the records do not by any means disclose the regularity of which the system is capable. The method generally pursued to regulate the candle power of the gas to one point was as follows: Every morning before the time arrived for gas making, the quality of the gas in the holder as going to the city was determined on a Bunsen photometer, except that a standard light equal to 14 candles was turned on the burner (a 1-in. E. H. Batwing) and the durability of a 14-candle flame, while using at the rate of 2 c. f. per hour, was determined. The result should be 5 minutes for one-twelfth of a cubic foot, or 60 minutes for 2 cubic feet. Whatever the gas lacked, or exceeded this amount was marked on a slip for the guidance of the gas maker.

The gas maker was provided with two burners of equal capacity, one on each limb of a differential gauge. One of these was supplied with gas from the street main, and the other was supplied from

the gas making. The directions were to keep the flames visi-
9601 bly equal, when the quality was right in the holder, and to exceed or diminish the making gas, as the holder gas was below or above the 60 minutes standard. While the above method carefully carried out will give a very fair result, as carried out, there were sometimes intervals of several days between tests at Danbury, on many occasions, thus giving an opportunity for the gas to sag in cold weather or rise above the mean in the spring season. Not only is more oil required in cold weather, but even with the increased quantity shown in the records, the gas would sag below standard, and this is particularly noticeable since the use of gas oil. As before stated the writer believes the length of the Danbury retorts to be too short for cracking up the vapors into their most permanent forms of illuminants; although they probably give a somewhat larger result in light during moderate weather. The analyses of gas made with smaller retorts, and from oil, point forcibly to this conclusion, and while it may not be possible to make a gas which will not require somewhat more of oil during the excessively cold weather of our winter, it will be possible to greatly restrict this difference by means of giving a greater ratio of length to diameter, than obtains in the Danbury plant.

In order to weather the "minimum standard" point in bad weather, close hauled and close to, the plan put in use in New Orleans and very closely watched for fouls from the poop deck of the City Hall, during a period of several months, the enclosed log, or record, is offered.

The plan followed was that of the gas clock, which, according to the recollection of the writer was designed and constructed by Mr. Milsted of the American Meter Co. The "gas-clock" was designed
and used on the assumption that in the best practise of gas
9602 making, the quality of the gas could not be prevented from deviating from the given standard, the use of the gas clock was to so record and expose the result of the deviations during a day's make, that the gas could be averaged to the standard by the workmen in charge of the operations. The writer will not go into the details of the working of the gas clock at this time; suffice it to say, the result of its careful use led to an uniformity in the production of a high candle power gas, that has probably never been equalled. The record kept at New Orleans, or rather a certified copy thereof, is offered as evidence of how close the minimum can be shaved by means of the upright retort, worked according to the indications of the gas clock, of Mr. Milstead.

It has been claimed by some that the construction and operations of works under the management of the U. G. I. Co. of Philadelphia, may be taken as models of efficiency, economy, and regularity of product. The writer therefore calls attention to the works at Fall River, Mass., as an example. According to the Inspectors' report, (12th annual) the highest quality was 26.7; the lowest, 18.2; the average, 20.59; a range of 8.5 candles, or a range of 41 per cent., taking the mean as a basis. This, the result of 47 inspectors; less than one per week; therefore the chances were one to six against

catching either the highest or lowest quality. Contrast this with Haverhill, employing a retort process; highest, 22.4; lowest, 18.6; range, 3.8, or a range of 18.4 per cent. of the mean quality. But this performance was with naphtha. At New Orleans the extreme range on 96 daily tests was 4.56 candles on average 33.33. or 13.5 per cent. As this extreme range happened within 24 hours, it is altogether probable it was the result of some peculiar derangement at the works, for it occurred but once in six months.

9603 COPY OF THE CITY SURVEYOR'S TESTS OF THE QUALITY OF NEW ORLEANS GAS.

This is to certify that at the request of Mr. H. H. Edgerton, I have made the accompanying copies of the weekly report of the daily tests of gas from the letter book of 1885, in the office of the City Surveyor. These tests extend from July 24th, 1885, to December 1st, 1885, when they were discontinued. These tests were made by me and reported to the Council by D. M. Brosnan, City Surveyor. For identification, I have paraphrased all the accompanying copies, as follows: "O. K. L. M. Brown, Ass't City Surveyor."

(Signed) L. M. BROWN,
Ass't City Surveyor.

NEW ORLEANS, *July 28th,* 1885.

To the Honorable Mayor and City Council of the City of New Orleans:

GENTLEMEN: I have the honor to report on the testing of both gas and electric lights as follows:

The photometer loaned the City by Mr. H. H. Edgerton has been placed in position in the old drafting room on the fourth floor of the City Hall building, and the following tests of the intensity of lights from gas made:

July 24th, 1885.

	At the rate of 3 cu. ft. per hour.	At the rate of 5 cu. ft. per hour.
1st.	19.3 candles.	32.10 candles.
2nd.	20.0 candles.	33.33 candles.
3rd.	19.9 candles.	33.20 candles.
4th.	20.9 candles.	33.60 candles.
5th.	19.6 candles.	32.70 candles.
6th.	19.1 candles.	31.80 candles.

July 27th, 1885.

1st.	20.4 candles.	34.0 candles.

July 28th. 1885.

1st.	20.4 candles.	34.0 candles.
2nd.	20.0 candles.	33.33 candles.
3rd.	19.9 candles.	33.15 candles.

These tests were made with the gas burning at the rate of three (3) cubic feet per hour, although the recognized photometer
9604 test is made on a basis of five cubic feet per hour. As the burners for water gas will not admit of its burning at the rate of five (5) cubic feet per hour, the tests are made with three-foot burners, and by calculation that at the rate of five cubic feet per hour is obtained.

In relation to the testing for brilliancy of electric light, as ordered by your Honorable body, this office having no photometer for the purpose, has availed itself of the use of one owned by the New Orleans Gas Light Co., set up in the residence of Mr. Walton Clark, an employee of the said company, at the corner of Robertson and Canal streets.

NEW ORLEANS TESTS FOR QUALITY OF GAS.

These tests were made on the 8th of June, last, and on the 24th of the present month, on which occasion Honorabe William Moon, Michael Carroll, Peter Farrell and Victor Maubert, members of the Committee of Testing of Lights, were present, also Mr. Shields, Council Committee Clerk and Mr. L. W. Brown. Draftsman, etc., of this office. The following intend/ities were obtained:

June 8th, 1885.		July 24th, 1885.	
1st.	366 candles.	1st.	768 candles.
2nd.	708 candles.	2nd.	938 candles.
3rd.	780 candles.	3rd.	783 candles.
4th.	162 candles.	4th.	449 candles.
5th.	343 candles.	5th.	431 candles.
6th.	126 candles.	6th.	837 candles.

The method of making these tests is the same as that in testing the gas lights, with the exception, that while the assumed or known power of the lights in the gas tests remained stationary, and the semi-transparent disc used for obtaining one point of equal illumination between the two lights is moved along a bar, they are reversed in testing the electric lights. For further testing of these lights the City should have a similar photometer, and a horse and wagon to move it about.

Very respectfully,
(Signed) D. M BROSNAN,
City Surveyor.

9605 August 4th.

GAS TESTS.

		At 3 feet pr hour, candle power.	Calculated to 5 cu. ft. per hour.
July	28th.	19.9 candles.	33.15 candles.
	29th.	19.2 candles.	32.06 candles.
	30th.	19.4 candles.	33.00 candles.
	31st.	19.6 candles.	32.70 candles.
Aug.	1st.	19.93 candles.	33.20 candles.
	2nd.	20.13 candles.	33.51 candles.

August 11th, 1885.

Aug.	3rd.	20.13 candles.	33.51 candles.
	4th.	19.40 candles.	32.30 candles.
	5th.	19.70 candles.	32.80 candles.
	6th.	19.23 candles.	32.00 candles.
	7th.	19.80 candles.	33.00 candles.
	8th.	19.70 candles.	32.80 candles.
	9th.		
	10th.	19.60 candles.	32.60 candles.

August 18th, 1885.

Aug.	11th.	19.50 candles.	32.50 candles.
	12th.	19.80 candles.	33.00 candles.
	13th.	19.93 candles.	33.21 candles.
	14th.	19.80 candles.	33.00 candles.
	15th.	20.23 candles.	33.70 candles.
	17th.	19.90 candles.	33.20 candles.

August 25th.

Aug.	18th.	19.90 candles.	33.20 candles.
	19th.	19.60 candles.	32.66 candles.
	20th.	19.70 candles.	32.80 candles.
	21st.	19.40 candles.	32.30 candles.
	22nd.	19.80 candles.	33.00 candles.
	24th.	19.70 candles.	32.80 candles.

September 1st, 1885.

		Burning 3 cu. ft. per. hour.	Calculated to 5 cu. ft. per hour.
Aug.	25th.	20.1 candles.	33.50 candles.
	26th.	19.7 candles.	32.80 candles.
	27th.	19.9 candles.	33.20 candles.
	28th.	20.0 candles.	33.33 candles.
	29th.	19.6 candles.	32.66 candles.
	31st.	19.8 candles.	33.00 candles.

9606 September 8th.

Sept.	1st.	19.70 candles.	32.80 candles.
	2nd.	19.92 candles.	33.20 candles.
	3rd.	19.63 candles.	32.72 candles.
	4th.	19.90 candles.	33.16 candles.
	5th.	19.87 candles.	33.12 candles.
	7th.	19.90 candles.	33.16 candles.

September 15th.

Sept.	8th.	19.97 candles.	33.28 candles.
	9th.	19.80 candles.	33.00 candles.
	10th.	19.90 candles.	33.20 candles.
	11th.	19.70 candles.	32.80 candles.
	12th.	19.80 candles.	33.00 candles.
	14th.	19.85 candles.	33.10 candles.

September 29th.

Sept.	15th.	19.80 candles.	33.00 candles.
	16th.	19.90 candles.	33.20 candles.
	17th.	19.88 candles.	33.10 candles.
	19th.	19.80 candles.	33.30 candles.
	21st.	19.85 candles.	33.00 candles.
	18th.	19.98 candles.	33.10 candles.

September 29th.

Sept.	22nd.	20.04 candles.	33.40 candles.
	23rd.	20.10 candles.	33.50 candles.
	24th.	19.70 candles.	32.80 candles.
	25th.	19.85 candles.	33.10 candles.
	26th.	19.90 candles.	33.20 candles.
	28th.	19.70 candles.	32.80 candles.

October 6th.

Sept.	29th.	19.30 candles.	32.26 candles.
	30th.	19.40 candles.	32.35 candles.
Oct.	2nd.	20.00 candles.	33.33 candles.
	3rd.	19.90 candles.	33.20 candles.
	5th.	19.70 candles.	32.80 candles.

9607

October 20th.

Oct.	6th.	19.80 candles.	33.00 candles.
	7th.	20.00 candles.	33.33 candles.
	8th.	19.30 candles.	33.00 candles.
	9th.	20.00 candles.	33.33 candles.
	10th.	20.10 candles.	33.50 candles.
	12th.	19.80 candles.	33.00 candles.
	13th.	19.92 candles.	33.20 candles.
	14th.	19.89 candles.	33.15 candles.
	15th.	19.95 candles.	33.25 candles.
	16th.	19.80 candles.	33.00 candles.
	17th.	19.98 candles.	33.30 candles.
	19th.	19.98 candles.	33.30 candles.

November 3rd.

Burning 3 cu. ft. per hour.			Calculated to 5 cu. ft. per hour.
Oct.	26th.	19.70 candles.	32.85 candles.
	27th.	19.80 candles.	33.00 candles.
	28th.	19.99 candles.	33.33 candles.
	29th.	19.70 candles.	32.80 candles.
	30th.	19.67 candles.	32.78 candles.
Nov.	2nd.	19.96 candles.	33.20 candles.

November 10th.

Nov.	2nd.	19.95 candles.	32.20 candles.
	3rd.	19.50 candles.	32.50 candles.
	4th.	19.44 candles.	32.40 candles.
	5th.	18.00 candles.	30.00 candles.
	6th.	19.95 candles.	33.20 candles.
	7th.	20.30 candles.	33.96 candles.

November 17th.

Nov.	10th.	19.99 candles.	33.33 candles.
	11th.	20.71 candles.	34.50 candles.
	12th.	20.00 candles.	33.33 candles.
	13th.	19.40 candles.	32.35 candles.
	14th.	19.81 candles.	33.02 candles.
	16th.	19.65 candles.	32.75 candles.

9308

November 24th.

Nov.	17th.	20.00 candles.	33.33 candles.
	18th.	20.74 candles.	34.56 candles.
	19th.	20.50 candles.	34.16 candles.
	20th.	19.65 candles.	32.75 candles.
	21st.	20.30 candles.	33.96 candles.
	23rd.	19.54 candles.	32.57 candles.

November—December 2nd.

Nov.	24th.	19.65 candles.	32.75 candles.
	25th.	19.70 candles.	32.83 candles.
	27th.	20.02 candles.	33.36 candles.
	28th.	19.53 candles.	32.23 candles.
	30th.	20.00 candles.	33.33 candles.

(Signed) D. M. BROSNAN,
City Surveyor.

L. M. BROWN,
Ass't City Surveyor.

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

6630

9622 COMPLAINANT'S EXHIBIT 391.

(For Identification.)

AN ORDINANCE

OF THE

CITY OF PHILADELPHIA.

Approved November 12th, 1897, Authorizing a Lease of the

PHILADELPHIA GAS WORKS

TO

THE UNITED GAS IMPROVEMENT COMPANY.

AN ORDINANCE

Authorizing the Execution of a Contract with The United Gas Improvement Company, its successors and assigns, by the City of Philadelphia, for the lease to the former of the gas works, street mains, conduits, pipes. services, meters, and other property, real and personal, of the latter, used for and in connection with the manufacture and distribution of gas in the City of Philadelphia; for the operation, maintenance, enlargement, extension, and betterment of the same; for the manufacture and distribution of gas in said city by said The United Gas Improvement Company, its successors and assigns, and for the exclusive supply, by said lessee and its assigns, of all gas to be supplied to consumers by or with the consent of said city during the term of the lease; and
9623 also consenting to the entry of The Equitable Illuminating Gas Light Company of Philadelphia upon the streets of the City of Philadelphia, in case of its becoming an assignee of the United Gas Improvement Company to such extent as shall be necessary to enable it to perform its duties as such assignee.

WHEREAS, The sole source of supply of gas in the City of Philadelphia, saving of that manufactured and supplied to said city under its contract dated the third day of August, 1888, with the Philadelphia Gas Improvement Company, and also of that supplied by the Northern Liberties Gas Light Company, which latter Company claims a right also to supply gas in portions of said city is certain property known collectively as the Philadelphia Gas Works, owned by said city and now operated by it; and,

WHEREAS, Very large sums of money ought now to be expended in laying additional mains, services, and connections in supplying meters and appurtenances, and in the erection of new and additional apparatus necessary for the economical manufacture, storage, and distribution of gas sufficient to supply the present and prospective demands for gas by the city and its inhabitants; and,

WHEREAS, The requirements of the city for other municipal purposes are of such a pressing character that it would be extremely inconvenient for it to make said expenditures at the present; and,

WHEREAS, It is deemed desirable to secure by contract with a responsible company the maintenance, operation, development, and extension of its gas plant, and of its system of distribution

of gas, for a term of years, and also to resume at the end of said term possession of its works and plant, modernized and fully equipped, without impairment of the exclusive privilege of supplying gas within the limits of said city now vested in it; and,

WHEREAS, Said object can be accomplished by leasing all its property, real and personal, known collectively as the Philadelphia Gas Works, and the appurtenances, for a comparatively long term of years, under a contract insuring to the lessee during said term possession of said works and of the exclusive right, except as hereinafter noted, to supply the citizens of Philadelphia with gas; now, therefore,

SECTION I. *The Select and Common Councils of the City of Philadelphia do ordain:*—

That the Mayor of said city be, and hereby is authorized to execute and deliver on the part of the city to The United Gas Improvement Company, a corporation of the State of Pennsylvania, its successors and assigns, a lease and contract in the words following, and that the same, when delivered, shall be binding upon the City of Philadelphia:—

THIS AGREEMENT, made this day of , 189 , between the *City of Philadelphia* of the one part, and *The United Gas Improvement Company*, a corporation duly organized under the laws of the State of Pennsylvania, having its principal office in said city of Philadelphia, of the second part, *witnesseth:*

WHEREAS, By an ordinance of the City of Philadelphia entitled "An Ordinance Authorizing the Execution of a Contract with The United Gas Improvement Company, its successors and as-
9625 signs, by the City of Philadelphia, for the lease to the former of the gas works, street mains, conduits, pipes, services, meters, and other property, real and personal, of the latter, used for and in connection with the manufacture and distribution of gas in the City of Philadelphia; for the operation, maintenance, extension, and betterment of the same; for the manufacture and distribution of gas in said city by said The United Gas Improvement Company, its successors and assigns, and for the exclusive supply, by said lessee and its assigns, of all gas to be supplied to consumers, by or with the consent of said city during the term of the lease; and also consenting to the entry of The Equitable Illuminating Gas Light Company of Philadelphia upon the streets of the City of Philadelphia, in case of its becoming an assignee of The United Gas Improvement Company to such extent as shall be necessary to enable it to perform its duties as such assignee," duly approved the day of , 189 , it was provided for the reasons therein set forth that this contract should be executed; now,

Therefore, It is agreed between the parties hereto as follows:

Clause I. The City of Philadelphia does hereby lease to the said The United Gas Improvement Company, its successors and assigns, for the term beginning the day of , 189 , and ending December 31, 1927, all the property, real and personal, collectively known as the Philadelphia Gas Works, with the appurtenances, including, *inter alia*, the property particularly described in Exhibit A, hereto attached, which is to be taken as a part of this contract, comprising, generally, the land, buildings, tene-

ments, machinery, apparatus, tools, mains, pipes, services,
9626 meters and other appurtenances possessed or used by or for the City of Philadelphia in the manufacture, storage, sale, distribution, and supply of gas, it being understood that the specification of said leased property in said Exhibit A shall not be construed in such way as to exclude from the list any items omitted which should have been herein included; and that no unpaid bills for gas or liens against real estate for the same nor unpaid accounts for residual products existing at the date when the lessee takes possession are included or intended to be included in the property herein assigned and leased; and it being further understood and agreed that The United Gas Improvement Company, its successors and assigns, shall at its own expense assume and pay any and all ground rents and the rental of any land, building or buildings, of which the city is a lessee, which are used in connection with the city's gas business. Delivery shall be made of all such property to said The United Gas Improvement Company, its successors and assigns, by the City of Philadelphia, as soon as may be after the execution of these presents and antecedently to the date fixed for the commencement of the lease and upon the performance by the said The United Gas Improvement Company of the obligations imposed upon it by Clause 3 of this agreement, it being understood that the City of Philadelphia also must do all necessary on its part to be done to enable said The United Gas Improvement Company to know the amount to be paid under Clause 2. And said lessee hereby agrees that it will pay all rents or other charges for water which shall be used by the lessee upon the leased premises or any part thereof.

The City of Philadelphia does hereby authorize and em-
9627 power the said The United Gas Improvement Company, its successors and assigns, hereafter during the term of this contract to retain possession of, maintain, change, alter, and repair, and to operate said gas works and appurtenances and all the property hereby leased and to lay, repair, remove, relay, extend, and maintain mains, pipes, services, and appurtenances along and beneath the surface of the highways, streets, avenues, lanes, alleys, ways, and public places in said city for the supply and distribution of gas; and said Company, its successors and assigns, during the continuance of this contract, shall have the exclusive right, for said purposes, to enter upon and occupy all said highways, streets, avenues, lanes, ways, alleys, and public places, and to supply and distribute gas through pipes laid therein: *Provided, however,* That to such extent as the Northern Liberties Gas Light Company is now possessed of a right to supply gas within any portion of the City of Philadelphia, this contract shall not be construed as intended to vest in the lessee any right in such territory, except such rights as the City has therein. The City of Philadelphia agrees that during the term of this contract it will do nothing, by ordinance or otherwise, which will in any way interfere with, or limit, restrict, or impair this exclusive right hereby vested in said The United Gas Improvement Company, its successors and assigns. All openings, excavations, and repaving shall be made subject to such general rules and regulations as from time to time shall be in force concerning the opening, excavation, and repaving of streets, and the protection of travel

along same, and the trenches shall be refilled and repaved with the same material and character of paving as before they were
9628 opened. All openings, excavations, repaving and refilling shall be subject to the approval of the Department of Public Works. If at any time The United Gas Improvement Company, its successors and assigns, shall neglect or refuse to refill any trenches and repave over all openings which it or its successors or assigns shall have made, upon notification from the Department of Public Works, said Department is hereby given full power and authority to do such refilling and repaving at the expense and cost of The United Gas Improvement Company, its successors and assigns, and if the City of Philadelphia at any time in the future build and construct a suitable subway that the said lessee, its successors and assigns, shall and will when so requested by the City of Philadelphia place its pipes in such subway at its own cost and expense, and no rental shall be charged therefor by the City of Philadelphia. It shall be unlawful for the said The United Gas Improvement Company to assign this contract to The Equitable Illuminating Gas Light Company of Philadelphia, and to any other corporation of Pennsylvania having power to exercise the franchise, and also to enter into an agreement with said Company, or with any other of said Companies, for the performance in whole or in part, of this contract, or for vesting in such assignee any rights under this contract, and to authorize such other company or companies to do all things necessary in and about such performance, including the occupancy and use of the highways, streets, avenues, lanes, ways, alleys, and public places in laying, repairing, removing, relaying, extending, and maintaining mains, pipes, services, and appurtenances, and supplying gas. Authority is hereby given to the said The Equitable
9629 Illuminating Gas Light Company of Philadelphia, assignee as aforesaid, and to any other corporation which may thus become the assignee or covenantee of the said The United Gas Improvement Company, to enter upon and to occupy the highways, streets, avenues, lanes, ways, alleys, and public places of the City of Philadelphia during the existence of this lease, but no longer, for the purpose of laying, repairing, removing, relaying, extending and maintaining mains, pipes, services, and all other appurtenances and appliances necessary for the distribution of gas to the City of Philadelphia and to the inhabitants thereof. Such assignees, including the said The Equitable Illuminating Gas Light Company of Philadelphia, may manufacture, distribute, and sell gas in all parts of the City of Philadelphia subject to the same limitations and restrictions as are herein imposed in the grant to The United Gas Improvement Company, to said City and to the inhabitants thereof at all times hereafter during the existence of this lease. No assignment of this lease, or of any of the rights or privileges herein granted, nor any contract with the said The Equitable Illuminating Gas Light Company of Philadelphia, or any other company, shall in any way diminish the primary obligation and liability of the said The United Gas Improvement Company to perform all the obligations of this contract. Its obligation hereunder shall in no respect be diminished or impaired by any such assignment or contract, but it shall remain liable jointly with such assignee or covenantee for the performance

of all the obligations hereof to the same extent as if no assignment, sublease, or contract had been made by it. In any case in which an assignment or assignments of this contract shall be made,
9630 written notice that an assignment has been made, giving the name of the assignee and the date of the assignment, shall be filed by The United Gas Improvement Company in the office of the Mayor before the assignee shall acquire any rights under this contract.

Clause 2. An inventory and appraisement shall be prepared by the Director of Public Works of all coal, coke, tar, and lime on hand at said City's Gas Works and of all gas on hand in the holders, mains, and pipes of the City when the property leased shall be delivered to the lessee hereunder, and said The United Gas Improvement Company shall pay to said City the amount of this appraisement at once upon presentation to it of such inventory and appraisement. In making such appraisement the Director shall be guided by the cost (in case of gas in holder, mains, and pipes, it shall be the City's holder cost) of the articles named therein. The appraisement of this inventory shall be made by the Director of the Department of Public Works, or by an appraiser or appraisers appointed by him; said appraisers shall be guided by and bounded by the market price of the articles which will be enumerated in the said inventory at the date this ordinance becomes a law. The current bills for gas shall be collected by the United Gas Improvement Company, which shall pay to the City Treasurer as received the proportion of said receipts to which it is herewith agreed said City shall be entitled, which proportion shall be represented in each case by a fraction having as its denominator the number of days covered by the bill and for its numerator the number of said days during which gas was supplied to said consumer by the City.

Clause 3. Simultaneously with the execution of this agreement, The United Gas Improvement Company shall execute and
9631 deliver to the City of Philadelphia its bond, with surety or securities, in the penal sum of one million (1,000,000) dollars, conditioned for the faithful performance of the obligations hereof. Such bond shall be in such form as shall be approved by the City Solicitor, and the surety or sureties thereon shall be approved by him.

Clause 4. The said The United Gas Improvement Company, its successors and assigns, shall, at the expiration of two years from the date of the lease, surrender, release, and deliver to the City of Philadelphia full and absolute possession of all that part or portion of the property known as the Ninth Ward Station, described as follows, to wit: All that certain lot or piece of ground with the buildings thereon erected, bounded on the south by Chestnut street, on the east by Twenty-fourth street, on the north by Market street, and on the west by the Schuylkill River; and also, all that certain lot or piece of ground with buildings thereon erected, bounded on the south by Market street, on the west by the Schuylkill River, on the north by the Pennsylvania Railroad, and on the east by Twenty-third street: *Provided, however,* That the said The United Gas Improvement Company, its successors and assigns, shall have the right to remove the works, machinery, and appliances located upon the property so

to be delivered, surrendered, and released, to other portions of the leased property at any time prior to the surrender of said two above described lots or pieces of ground and buildings thereon erected.

Clause 5. The City of Philadelphia hereby assigns to the said The United Gas Improvement Company, its successors and assigns, all its rights under its contract with the Philadelphia Gas
9632 Improvement Company dated the third day of August, 1888, and it agrees that said Philadelphia Gas Improvement Company may assign the same contract to the said The United Gas Improvement Company, its successors and assigns.

Clause 6. If, on or before the first day of July, 1907, (and time in this respect shall be of the essence of this contract), there shall have been served upon The United Gas Improvement Company a written notice, signed by the Mayor of the City of Philadelphia, of the desire of said City to terminate this contract at the expiration of ten (10) years from the first day of January, 1898, and if, on or before said first day of July, 1907, an ordinance providing for such termination shall have been duly enacted by said City of Philadelphia, then it shall be the right of said City of Philadelphia to terminate this contract at the expiration of ten (10) years from the first day of January, 1898: *Provided*, That on or before December 31, 1907 (and time in this particular shall be of the essence of this contract), the payments herein provided to be made to the said The United Gas Improvement Company, its successors and assigns, shall have been fully and completely made by said City. In case of failure to pass said ordinance on or before said first day of July, 1907, or of a failure to notify The United Gas Improvement Company on or before that date of the desire of the City to take possession of the leased property in pursuance of said ordinance, or of the failure of the City of Philadelphia to pay in full, on or before the thirty-first day of December, 1907, the amount of money herein provided, this option on the part of the City of Philadelphia to terminate this contract prior to December 31, 1927, shall cease and
9633 be forever at an end. The payment which must be so made to The United Gas Improvement Company, its successors and assigns, shall be a reimbursement of all sums of money expended by the said The United Gas Improvement Company, its successors or assigns, subsequent to the date of this contract, in or about the buildings, apparatus, machinery, mains, pipes, services, connections, meters, appliances, and appurtenances of the Philadelphia Gas Works and of the gas works now owned and operated by said Philadelphia Gas Improvement Company, including, however, such sum or sums of money only by said Company, its successors and assigns, paid in and about the alteration, enlargement, removal, extension, betterment, and improvement of all said manufacturing and distributive systems and plants, with interest thereon at the rate of six (6) per centum per annum, simple interest; together with a sum which shall be the equivalent of the appraised value of the property now belonging to the Philadelphia Gas Improvement Company used as aforesaid, and interest thereon at the rate of six (6) per cent. per annum, simple interest, from the date of this lease to the date of payment. Said appraised value shall be ascertained by the report of at least a majority of three (3) appraisers, one to be appointed by

the City of Philadelphia, one by the said The United Gas Improvement Company, and the third by the two first chosen. Said report of the appraisers shall be filed with the Mayor of the city within sixty (60) days after the date of this contract. In order to aid in the appraisement last provided for, an inventory showing in detail the property now belonging to the Philadelphia Gas Improvement Company, used for the purpose of carrying out its contract
9634 with the City of Philadelphia, shall be made not later than thirty (30) days after the execution of this agreement. This shall be certified to as being correct by either the President or the Treasurer of The United Gas Improvement Company and the Mayor of the City of Philadelphia, representing the City. Upon the execution and delivery of this contract and of the demised premises, there shall be delivered to the Mayor the agreement of the Philadelphia Gas Improvement Company assenting to, accepting, and agreeing to be bound by the provisions of this Clause 6 relative to the property of that Company. On the first day of February, 1898, The United Gas Improvemnet Company, its successors or assigns, shall file with the Controller of the City of Philadelphia a statement showing in detail expenditures during the year 1897 for alterations, enlargements, removals, betterments, and improvements not including repairs made by it in and about the Gas Works, and for the mains, meters, services, and appurtenances. On the first day of February of each year following during the continuance of this lease the said The United Gas Improvement Company, its successors and assigns, shall file with the Controller of the City of Philadelphia a similar statement of expenditures in and about the same matters made during the calendar year immediately preceding, and on the thirty-first day of December, 1907, shall file such a statement for the year ending on that date. Interest upon the amounts so shown shall be calculated and paid at the rate of six (6) per centum per annum, simple interest, from the first day of the year succeeding that in which the expenditures were made to the date of payment by the City of Philadelphia. The Controller of the City of Philadelphia shall have the right to examine, audit, and verify the
9635 statements so to be filed as herein provided. Said The United Gas Improvement Company hereby agrees that upon the receipts of payments aforesaid it shall and will execute and deliver to the City of Philadelphia good and sufficient deeds and instruments in writing necessary to transfer and convey said property so paid for to said City of Philadelphia. Said option shall only be exercised in the way and manner and upon the terms herein provided. If it shall so happen that the said City cannot exercise or shall not exercise this option upon the terms herein provided, this contract shall be treated as though said option had never been given.

Clause 7. Upon the termination of this lease by the expiration of the term specified in Clause 1 of this contract, namely on December 31, 1927, said The United Gas Improvement Company, its successors and assigns, shall deliver to the said City the property herein leased in the same good order and condition in which the same now is, to such extent as said property shall not have been altered or changed under this contract by the enlargements, extensions, betterments, and improvements made in and about the manufacturing

and distributing systems and plants during the period of this lease, and together with all such alterations, changes, enlargements, extensions, betterments, and improvements, all of which shall be so delivered to the City in good first-class order and condition at such termination of the lease. Said The United Gas Improvement Company, its successors and assigns, shall also at the same time deliver to the said City in good first-class order and condition the property now belonging to the said Philadelphia Gas Improvement Company, used under said contract between it and the City of Phila-
9636 delphia as above provided, and also all extensions, enlargements, improvements, and betterments of said property, free and clear of all debts and obligations of every sort, kind, and description; and together with the right to use all processes of every kind useful in the manufacture of gas then established and in use at any of said works. All the changes, alterations, constructions, removals, and repairs which shall be necessary to be made from time to time in the proper maintenance, extension, improvement, and betterment of the said leased Gas Works and appurtenances and the plant of the Philadelphia Gas Improvement Company, shall be made and done by said The United Gas Improvement Company, its successors and assigns, and the City of Philadelphia shall receive the same, together with the said plants and all the property of the Philadelphia Gas Improvement Company, in an efficient state at such expiration of this lease without any charge or cost to the City of Philadelphia. It is the intent of this agreement that the City of Philadelphia at the end of the term, namely on December 31, 1927, shall, without charge or cost, receive all of the said works in the condition of alteration, improvement, and change in which the same shall then exist, and the same shall be so maintained as to be then in first-class order and condition. Said The United Gas Improvement Company shall at its own cost and expense keep the buildings, machinery, and other property of the City of Philadelphia delivered to it, and which shall be constructed by it under this lease of the character usually insured by gas companies insured to the extent that such properties of gas companies are usually insured (but not less than the total insurance now carried by the City on said
9637 property), and shall insure the buildings, machinery, and other property of the City of Philadelphia delivered to it under this lease to an amount not less than the total insurance of the same now carried by the said City, and shall expend all sums received by it under any such policies of insurance upon the repair, replacement, or reconstruction of the city's buildings, machinery, and other property so damaged or destroyed by fire, received by said lessee hereunder. Upon the termination of this contract, either on December 31, 1907, or on December 31, 1927, the City of Philadelphia shall have the option to purchase all the coal, oil, coke, tar, lime, and other gas-making supplies and residual products then on hand at said works at the then market price, or to have the said The United Gas Improvement Company, its successors and assigns, remove the same at its own cost and expense as soon as conveniently can be done. All the gas in the holders, mains, and pipes of said works at the termination of this contract, either on December 31, 1907, or on December 31, 1927, shall be accounted for at holder

cost by the City to The United Gas Improvement Company when paid for by consumers.

Clause 8. The United Gas Improvement Company agrees for itself, its successors and assigns, that it shall and will within three (3) years from the date of the delivery to it of the said Gas Works, expend in the alteration, improvement, extension, and betterment of the manufacturing and distributive system, and mains, services, meters, connections, and appurtenances of said Gas Works referred to in this ordinance, at least five million (5,000,000) dollars, and thereafter in each year during the continuance of this contract expend such sum of money as may be needed from time to
9638 time to extend the same to provide for the growth of the business so as to supply gas wherever it may be demanded in accordance with the terms, provisions, and conditions of this clause of the lease. It is estimated that the total of such expenditures will be at least fifteen million (15,000,000) dollars, and the said The United Gas Improvement Company hereby agrees and binds itself, its successors and assigns, that it shall and will expend said sum of fifteen million (15,000,000) dollars during said period of thirty (30) years, and that it shall and will also expend all such other amounts over the above fifteen million (15,000,000) dollars, which may be required for the purposes stated above. The said the United Gas Improvement Company, its successors and assigns, shall extend the pipes and mains for the distribution of gas on such highways, streets, avenues, alleys, ways, and public places as may be necessary to meet the demand for gas, provided that at least one (1) consumer for every one hundred (100) feet of the extension of mains or pipe so made necessary shall first in writing agree to take gas from the said The United Gas Improvement Company, its successors and assigns, for a period of not less than one (1) year at the general rates for gas then in force; or in lieu of a consumer so contracting for each and every single building fitted with gas pipes, and for which application for the introduction of gas shall be made, such extension of one hundred (100) feet of mains or pipes so made necessary shall be made accordingly: *Provided, further, however,* In no case shall said Company, its successors and assigns, be required to lay any pipes while frost is in the ground. The laying or extension of pipes and mains for the distribution of gas shall
9639 be at the expense of the lessee and not chargeable to the consumer. Said The United Gas Improvement Company, its successors and assigns, shall at its own expense lay and furnish connecting or service pipes from the main or distributing pipes to the inside of the consumer's property line, and furnish and set the necessary meters (for which no charge or rental shall be made), and shall also at its own expense furnish and place a shut-off or stop-cock inside of the curb line whenever it desires to place the same. The intention of this agreement is that all changes, extensions, improvements, removals, and alterations in said Gas Works in the mains, pipes, and appurtenances thereto, and in the property needed to meet the demands for gas as herein provided, shall be made in such way and manner as shall maintain said Gas Works in first-class condition, with the best and most economical processes in use that are customary in the best regulated gas works. It is the

further intent of this agreement that without cost to the City of Philadelphia all such extensions, improvements, alterations, and betterments in the manufacturing or distributing system of said Gas Works shall, upon the termination of the lease by the expiration of its full term, viz., on December 31, 1927, pass to and vest in the City of Philadelphia upon the terms and conditions herein provided.

Clause 9. Said The United Gas Improvement Company or its assigns shall furnish proper stations for testing the candle-power of the gas, located at a distance of not less than one (1) mile from each point of manufacture and shall equip the same with a bar photometer and other appliances customary and necessary for such purposes. Tests shall be made and recorded daily by The
9640 United Gas Improvement Company or its assigns, and such records shall be at all times open to the inspection of the City. All such tests shall be made in the presence of a representative of the City appointed by the Mayor, who shall have the right to also make such tests himself at such stations in the presence of the Company's representative. Such representative of the City shall be the inspector of meters, if City Councils shall provide by this contract or otherwise for the appointment of such an official. The said The United Gas Improvement Company, its successors or assigns, shall as soon after the delivery to them of said Gas Works hereunder as is possible with due diligence and despatch, supply gas of good quality of not less than twenty-two (22) candle-power, daily average, tested as above, and maintain said supply during the continuance of this lease unless prevented by accidents beyond their control. After the expiration of two years from the date of this lease, for every failure of The United Gas Improvement Company, its successors or assigns, to comply with the terms and conditions of this clause relative to tests, quality, and candle-power of gas, the said The United Gas Improvement Company, its successors and assigns, shall pay to the City of Philadelphia a penalty of five hundred (500) dollars for each day during which such failure continues. In every case of such default and demand made by the city for the payment of the fine The United Gas Improvement Company, its successors or assigns, shall make payment of the fine to the city, but said The United Gas Improvement Company, its successors or assigns, shall be entitled to repayment of the same by the City if it shall be shown that the default on account of which the fine was imposed
9641 was due to causes beyond the control of the said The United Gas Improvement Company, its successors and assigns.

Clause 10. The United Gas Improvement Company, its successors and assigns, shall from time to time as the same shall be demanded by the City of Philadelphia, supply to it in each year without charge delivered in its various public buildings, along the line of its mains, such amounts of gas as may be required for illuminating purposes in said public buildings; said The United Gas Improvement Company, its successors and assigns, shall also supply gas without charge to the city's street lamps and lamps in Public Squares, along the line of its mains up to the number that are being lighted at the beginning of this lease; and shall also in each suc-

ceeding year supply gas without charge to three hundred (300) street lamps or lamps in Public Squares in each year along the line of its mains in addition to the number supplied in the preceding year when directed so to do by ordinance of Councils, which shall also specify the location of the same. All said lamps shall be furnished with burners which shall give not less than 22 candle-power, and shall be lighted every night and all night. Said The United Gas Improvement Company, its successors and assigns, shall at its own cost and expense run all services and make all connections between said street lamps and its distributing pipes or mains, furnish all burners required on said street lamps, and light, clean, extinguish, and repair all lamps and lanterns, and keep in repair all lampposts, lamps, and lanterns in use during the term of this lease.

Clause 11. The price which shall be charged to all con-
9642 sumers other than the City of Philadelphia by the said The United Gas Improvement Company, its successors and assigns, shall, until otherwise provided by ordinances of Councils, be one (1) dollar per thousand cubic feet. It shall be competent for Councils to reduce these charges from time to time by ordinances; but said ordinances shall not at any time reduce the price below the following: Until and including the thirty-first day of December, 1907, ninety (90) cents per thousand cubic feet. From January 1, 1908, until and including December 31, 1912, eight-five (85) cents per thousand cubic feet. From January 1, 1913, until and including December 31, 1917, eighty (80) cents per thousand cubic feet. From January 1, 1918, until and including December 31, 1927, seventy-five (75) cents per thousand cubic feet. The said The United Gas Improvement Company, its successors and assigns, shall be entitled to enforce the same penalties for non-payment of bills at the offices of the Company within five (5) days after presentation as are now in force in the city of Philadelphia, and the same remedies against consumers for breaches of their contracts for the supply of gas. But it is distinctly understood and agreed that nothing herein contained shall give to said The United Gas Improvement Company, its successors or assigns, any lien or claim upon a property for a tenant's or occupant's gas bills, or give the right to said The United Gas Improvement Company to refuse to furnish gas to any subsequent tenant or occupant of said property by reason of prior tenant or occupant having failed to pay the bill: *Provided, however,* That said The United Gas Improvement Company, its successors or assigns, shall not be required to furnish gas to any person, firm, or body corporate indebted for arrear-
9643 ages due for gas theretofore supplied to them. In order to provide for the amicable settlement of any disputes or disagreements which may arise between consumers and said The United Gas Improvement Company or its assigns, as to the amount of gas for which bill has been rendered and payment demanded, the correctness of which is disputed by the consumer, said The United Gas Improvement Company agrees, for itself and for its successors and assigns, that it will provide a proper and convenient place or places on the leased property at which its meters may be inspected, with the proper and customary apparatus therefor, for the use of the official and his assistants who may be appointed by the Mayor

as inspector of Meters. Upon complaint of any consumer doubting the accuracy of the bill and declining to pay the same, lodged with such Inspector alleging that the amount of gas for which the bill has been rendered and payment demanded is in excess of the amount consumed by such consumer, and upon demand thereafter made by the Inspector in writing to The United Gas Improvement Company or its assigns, said The United Gas Improvement Company or its assigns shall disconnect the meter in question and deliver it to the inspection station for examination, where the testing of the meter for the purpose of ascertaining the correctness of its measurements shall be made by such Inspector in the presence of the representative of said The United Gas Improvement Company or its assigns. Such tests shall be made according to the established and well-known methods used for such purposes. Any such meter shall be disconnected by said Company or its assigns between the hours of eight o'clock A. M. and three o'clock P. M.
9644 within 48 hours of the time when said Company or its assigns shall receive notice to disconnect such meter for such reasons; and the same shall be tested and returned to said The United Gas Improvement Company or its assigns within twenty-four (24) hours from its receipt at the testing station, bearing a seal upon which shall be written the report of the Inspector that the meter in question is correct or incorrect, and if the latter the percentage which it runs fast or slow, and the bill of the consumer about which the complaint has been made shall be corrected, according to such finding and report of the Inspector. Such Inspector of Meters and such assistants as the Mayor shall deem necessary shall be appointed by the Mayor and shall be duly sworn in conformity with the law to faithfully, honestly, and diligently perform the duties of their respective offices. Said The United Gas Improvement Company agrees for itself and its successors and assigns that it will annually and at the beginning of each year of the lease to pay to the City of Philadelphia the sum of ten thousand (10,000) dollars towards paying the salaries and expenses of the Inspector of Meters and his assistants, after the same shall be appointed in pursuance of this clause, and also towards de*f*aying the expenses which the city may be put to in connection with tests of gas made in *pr*usuance of Clause 9 of this lease. When a meter is removed for the purpose of testing, the said Company shall place a meter in place of one removed at their own cost and expense, the object being that no consumer shall be without light. The type of meter used for the measurement of gas shall be such type as shall be in general use in other large cities in the United States. Any consumer desiring such test shall, on making his application
9645 to such Inspector, pay to him the sum of one (1) dollar, taking his receipt therefor, which amount shall be returned to the consumer if the tests and reports of the Inspector shall show that the meter in question is fast, but otherwise shall be paid by the Inspector into the Treasury of the City of Philadelphia. Bills shall not be rendered more frequently than are now rendered to various classes of consumers.

Clause 12. The United Gas Improvement Company, its successors or assigns, shall pay to the city of Philadelphia in each year during

the continuance of this agreement as follows, viz.: Upon all gas sold prior to January 1, 1908, all sums received by them in excess of ninety (90) cents per thousand cubic feet. Upon all gas sold after December 31, 1907, and prior to January 1, 1913, all sums so received in excess of eighty-five (85) cents per thousand cubic feet. Upon all gas sold after December 31, 1912, and prior to January 1, 1918, all sums so received in excess of eighty (80) cents per thousand cubic feet. Upon all gas sold after December 31, 1917, and prior to January 1, 1928, all sums so received in excess of seventy-five (75) cents per thousand cubic feet. Statements shall be rendered and payments made under this clause by the lessee to the City as follows: Within twenty-five (25) days after the expiration of each quarter of each year for which any payment is to be made, beginning with the quarter preceding the first day of January, 1898, said The United Gas Improvement Company shall file with the Controller of the City of Philadelphia a statement sworn to by its President or Vice-President, or by its Secretary or Treasurer, which shall state

9646 the quantity of gas measured in cubic feet sold hereunder within the quarter ending with the last day of the preceding month, the amount of money collected for such sales or for sales in any previous quarter and the amount of money due and payable to the City of Philadelphia under the provisions of this clause out of such receipts; and shall make payment to the City Treasurer of such amount so ascertained to be due to the City of Philadelphia hereunder within five (5) days after the expiration of said period of twenty-five (25) days. The City of Philadelphia shall have the right at all reasonable hours during the continuance of this contract, by its proper officers, to examine those books of the lessee which show the amount of gas so sold and paid for, so as to verify the correctness of said statements.

Clause 13. The City of Philadelphia shall have the right at all times, by its proper officers, during the continuance of this lease to enter upon and examine the premises leased, to inspect the same, and to test the candle-power of the gas. Full facilities for these purposes shall be afforded by the lessee.

Clause 14. No indebtedness of the City of Philadelphia for or by reason or on account of the property hereinabove described, or the operations carried on therein or with the same prior to the delivery of the leased property shall be chargeable against the said The United Gas Improvement Company, its successors or assigns. The same shall be chargeable to and payable by the City of Philadelphia: *Provided, however,* That said The United Gas Improvement Company does herewith expressly agree to assume and discharge all contracts made for the Bureau of Gas for the purchase of supplies for the manufacture of gas which have not been delivered prior to the date when this lease takes effect.

9647 *Clause 15.* The said The United Gas Improvement Company, its successors or assigns, shall at all times during the continuance of this lease indemnify and save harmless the City of Philadelphia from all loss, injury, or damage which may be suffered by said City to or for any person, natural or artificial, by reason of any negligence of said Company, its successors or assigns, and the

COMPLAINANT'S EXHIBIT 392

Cost of Danbury Gas of 32.95 c. p. as given in papers accompanying letters of November 22d and 30th, 1905, to Chief Engineer Bradley and *pro rata* cost of 24 c. p. (N. Y.) gas, based upon the light equivalent theory of H. H. Edgerton.

	H. H. E.'s Cost of 32.95 c. p. Gas at Danbury, Year 1902-3. (Cents per M. by A. C. H.)		Cost per M. 24 c.p. Gas, Based on Danbury Cost.
	Amount $	Cents per M. c.	c.
WORKS:			
Fuel	3,756.35	14.935	
Lime	23.00	.092	
Gas Oil	9,061.86	36.030	
General Expense	2,131.20	8.474	
Station Repairs	182.90	.727	
Station Wages	4,098.43	16.295	
Total Works	19,253.74	76.553	55.76
Leakage — 3,878 M. x 76.553 / 21,273 M.		13.955	10.16
Cost Mfg. + Leakage		90.508	65.92
DISTRIBUTION:			
Distribution, Labor	938.37		
Tools	221.39		
Street Lamps	38.08		
Service Repairs	101.19		
Main Repairs	108.76		
Insurance	266.05		
Meter Repairs	256.44		
Total Distribution	1,930.28	9.073	6.61
MANAGEMENT:			
Salaries	3,772.08		
Rent	428.54		
Office Expense	468.00		
Total Management	4,668.62	21.946	15.98
Bad Debts	449.86	2.115	1.54
Taxes	1,112.87	5.231	3.81
Depreciation	2,534.84	11.916	8.68
Total Cost	29,950.21	140.789	102.54
Gas Bills—Less Discount	58,849.10	276.637	201.49
Balance to Cover Interest and Dividends	28,898.89	135.848	98.95

Gas Made, 25,151 M. cu. ft. Gas Sold, 21,273 M. cu. ft.

REMARKS.

The method of arriving at the cost of 24 c. p. gas is precisely the same as that used by Edgerton—this is best shown by checking his cost of 36.202c. per M. for 17.6 c. p., he having assumed that the 32.95 c. p. gas was 44 c. p., thus: (44:17.6::90.508:x) X=36.203c., and (32.95:24::90.508:x) X=65.92.

REPAIRS AND DEPRECIATION.

Station	$182.90
Services	101.19
Mains	108.76
Meters	256.44
Depreciation	2,534.84
Total	$3,184.13

Or 14.96c. per M. for Repairs and Depreciation, dividing by amount sold, namely, 21,273 M.

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COMPLAINANT'S EXHIBIT 393

Comparison of Costs of Manufacture of Oil and Water Gas, Danbury. Actual Costs of 32.95 c. p. Gas, as compared with Edgerton's Estimated Costs of 28 c. p. and 50 c. p. Gas for New York, and the *pro rata* costs of 28 c. p. and 50 c. p. Gas based upon the light equivalent theory of H. H. Edgerton.

(pp. 5025-7, etc.)

	1	2	3	4	5
		"Pro Rata" Cost per M. Based on Danbury H. H. E. Theory.		H. H. E.'s Estimated Costs per M. for New York.	
	Danbury 32.95 c.p.Gas Cost per M. (See Sheet 1.)	28 c. p. Gas (32.95:28::Col. 1:x).	50 c. p. Gas (32.95:50::Col. 1:x).	28 c. p. Gas (Compare Col. 2).	50 c. p. Gas (Compare Col. 3)
	c.	c.	c.	c.	c.
Generator Coke	..	..	..	4.400	3.87
Boiler Coke	..	..	..	1.160	1.16
Total Fuel	14.935	12.691	22.663	5.560	5.03
Lime	..	..	..	.750	.75
Oxide	..	..	..	.250	.25
Total Purification	.092	.078	.139	1.000	1.00
Gas Oil	36.030	30.617	54.674	23.265	37.60
Oil and Waste, Sundries	..	..	..	.370	.37
Water	..	..	..	.170	.17
General Expenses	..	..	..	.500	.50
Total General Expense	8.474	7.201	12.859	1.040	1.04
Repairs	.727	.618	1.103	1.500	1.50
Labor	..	..	..	1.780	1.78
Supervision, etc	..	..	..	.500	.50
Total Station Wages	16.295	13.847	24.737	2.280	2.28
Total Cost of Mfg	76.553	65.052	116.165	34.645	48.45

Comparing Columns 2 and 4 we find the *pro rata* cost of 28 c. p. Gas based on Danbury results almost *doubled* Edgerton's estimated cost for 28 c. p. Gas for New York.

Comparing Columns 3 and 5 we find the *pro rata* cost of 50 c. p. based on Danbury results to be *139.7 per cent. greater* than Edgerton's estimated cost for 50 c. p. Gas for New York.

Comparing Columns 1 and 5 we find the *actual* cost to manufacture Danbury Gas of *32.95 c. p.* to be *28.1c. per M. more* than Edgerton's estimated cost for *50 c. p.* Gas for New York.

The Oil used at Danbury to make 32.95 c. p. Gas was *9.348 gallons* per M. cu. ft. (corrected for temperature by H. H. E.) while in Edgerton's estimated cost of 50 c. p. Gas for New York he shows *8.88 gallons* of oil per M.

Furthermore, the cost of oil at Danbury for the period here considered was *3.97c. per gallon* ($9,061.86 -:- 28,346), while in estimated costs for New York the price is *4.23., showing* that actual cost at Danbury has the benefit of the lower price.

Cupola Coal used at Danbury for 32.95 c. p. Gas averaged *37.32 lbs.* per M., while Edgerton's estimated cost of 28 c. p. Gas only includes *22 lbs.* per M.

In this connection see Edgerton's answer to question, p. 5035: A. Yes, making rich gas. It does not take anything like the amount of coke per thousand to make rich gas that it does to make poor gas—

Q. Do you mean to say this rich gas you use requires less fuel? A. I mean exactly that. A great deal less, that is what is the matter.

NOTE—After completing the above tables it was discovered that the c. p. given by H. H. E. (32.95) and used in the tables for comparison is incorrect upon his own detail figures. Examination of figures for the several years shows that he obtains his yearly averages of c. p. by dividing the sum of monthly averages by 12. This is incorrect as to method as the average should be obtained by multiplying the amount of gas made each month by its average c. p. and dividing the sum of these products by the total make for the year. Following this correct method and accepting the monthly candle powers given by H. H. E. as being true averages, and then calculating the correct averages, the true average for the year is found to be 33.79 c. p. But following his incorrect method the average is found to be (408 -:- 12 =) 34 c. p.

Then the comparisons for costs of manufacture shown above become as follows:

Actual Cost per M. of 34 c. p. Danbury Gas (as before)	76.553c.
Pro rata Cost per M. of 28 c. p. Gas, H. H. E. Theory	63.044c.
Pro rata Cost per M. of 50 c. p. Gas, H. H. E. Theory	112.578c.
Edgerton's Estimated Cost per M. of 28 c. p. Gas for N. Y. (as before)	34.645c.
Edgerton's Estimated Cost per M. of 50 c. p. Gas for N. Y. (as before)	48.450c.

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COMPLAINANT'S EXHIBIT 394

DANBURY, CONN., RESULTS.
COAL AND GAS.

Year Ending May 31st.	Average Mixed Gas Made per Gallon of Oil.	Average Gallons Used per M. of Mixed Gas Made.	Average Candle Power.	Average Candles per Gallon.	Coal per M. of Mixed Gas Made.
1891	(1) 95.69	10.450	34.38	3.29	45.62
1892	(2) 101.49	9.853	35.3	3.58	45.63
1893	(2) 100.08	9.992	35.24	3.53	39.43
1894	(3) 98.48	10.154	35.83	3.53	41.11
1895	(3) 96.57	10.355	35.9	3.47	34.76
1896	(3) 93.98	10.641	34.96	3.29	40.09
1897	(3) 99.10	10.091	34.81	3.45	43.90
1898	(3) 108.73	9.197	35.42	3.85	40.47
1899	(3) 108.66	9.203	35.64	3.87	47.1
1900	(3) 106.61	9.380	35.54	3.79	42.84
1901	(3) 109.38	9.142	34.8	3.81	40.22
1902	(3) 116.59	8.577	34.4	4.01	37.29
1903	(3) 106.97	9.348	32.95	3.52	37.32
1904	(3) 106.17	9.419	33.43	3.55	32.12
1905	(3) 106.86	9.358	34.8	3.72	33.92

(1) Based on Naphtha used, as no record of Naphtha gone for first nine months of year 1890.
(2) Based on Naphtha gone, but not corrected to 60 degrees temperature.
(3) Based on Naphtha used, and corrected to 60 degrees temperature.

Note 1891 to 1899 inclusive used Naphtha.
Note 1900 to 1905 inclusive used Gas Oil.

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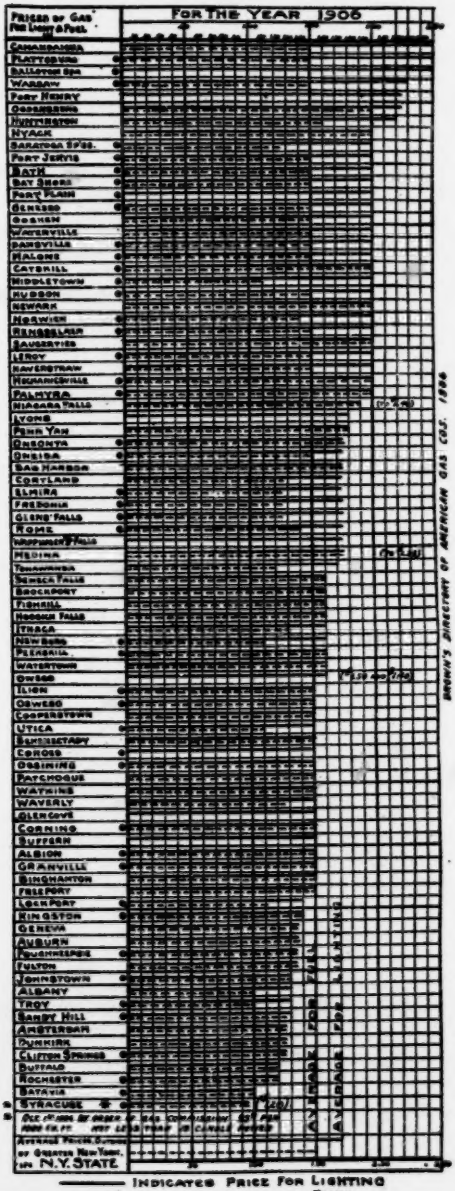
COMPLAINANT'S EXHIBIT 395
(For Identification)



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F. J. G.
March 15, 1905.

CITY'S EXHIBIT 3.

No. 6.

THE CITY OF NEW YORK,

DEPARTMENT OF

WATER SUPPLY, GAS AND ELECTRICITY.

BID OR ESTIMATE

For Furnishing Gas or other Illuminating Material for, and for Lighting, Extinguishing, Cleaning, Repairing and Maintaining the Public Lamps (and supplying Gas, etc., for New Lamps, when required), and for making certain Repairs to Lamp-posts, and for Furnishing Burners and Appliances of Improved Systems of Lighting on Streets, Public Buildings, Avenues, Piers, Parks and Public Places in the Borough of The Bronx, in The City of New York, for the term of nine months and sixteen days, from March 16, 1905, to December 31, 1905, both inclusive.

[On the margin:] The bidder's name and residence or place of business must be inserted here, and in case of firms, the name and residence or place of business of each and every member of the firm must be inserted.
347 of Ordinance.

Made this fourteenth day of March, 1905, by Consolidated Gas Co. of New York.

*1. Consolidated Gas Co. of New York do declare that we (are) the only person, persons or corporation interested in this bid or estimate; and that no other person, persons or corporation than are herein named have any interest in this bid or estimate, or in the contract proposed to be taken.

9655 2. We further declare that this bid or estimate is made without any connection with any other person, persons or corporation making a bid or estimate for the same work, and is in all respects fair, and without collusion or fraud.

Chapter 327, Laws of 1900.—3. We further declare that no member of the Board of Aldermen, head of a department, chief of a bureau, deputy thereof, or clerk therein, or any other officer of The

*NOTE.—In case a bid shall be submitted by or in behalf of any corporation, it must be signed in the name of such corporation by some duly authorized officer or agent thereof having knowledge as to the facts stated in the bid or estimate, and such officer or agent shall also subscribe his own name and office. If practicable, the seal of the corporation should also be affixed.

City of New York, is, shall be or become interested, directly or indirectly, as contracting party, partner, stockholder, surety or otherwise, in this bid or estimate, or in the performance of the contract, work or business to which it relates, or in any portion of the profits thereof.

Charter 1533.

349 of Ordinance.—4. We further declare that the names of the persons affixed to the consent hereto annexed were written by said persons respectively, and that said persons are householders or freeholders, in The City of New York, or duly authorized officers or agents of a guaranty or surety company duly authorized by law to act as surety.

5. We have examined the contract (including the specifications) for the supplies and work, in the form approved by the Corporation Counsel, and will contract, in the form so approved, to perform and complete the work mentioned in said contract and specifications, and furnish the supplies on the following terms, viz.:

OPEN FLAME GAS LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

I. For furnishing illuminating gas (of not less than 20 candle-power to burners consuming 3 cubic feet of gas per hour, by photometric test, made at a distance of not less than one mile from the place of manufacture) for each lamp, at each lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes and burners, the replacing of cross-heads, lamp-irons and lanterns, and the replacing and repairing of lamp-posts when owned by the Contractor, as specified and as noted in proposals, clauses Nos. 7 and 9, for the term of this contract, in the Borough of The Bronx, to wit:

9656

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

OPEN FLAME NAPHTHA LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

II. For furnishing illuminating material other than gas for each lamp, at each lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons,
9657 the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes and burners, burning appliances, lanterns, lamp-irons and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 7 and 9, for the term of this contract, in the Borough of The Bronx, to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

OPEN FLAME NAPHTHA LAMPS—LAMP-POSTS FURNISHED BY CONTRACTOR.

III. For furnishing illuminating material other than gas for each lamp, at each lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burners, burning appliances, lamp-posts, lanterns, lamp-irons and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 7*a* and 9, for the term of this contract, in the Borough of The Bronx, to wit:

9658 For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

MANTLE GAS LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

IV. For furnishing and connecting, ready for use, each mantle gas lamp, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it, including illuminant. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lanterns, lamp-irons, frames and cross-heads thereto, and repairing and replacing the lamp-posts when owned by the Contractor, as specified and as noted in proposals, clauses Nos. 8 and 9, for the term
9659 of this contract, in the Borough of The Bronx, to wit:

For furnishing all the above for each lamp, at each lamp, for 5,723 in number of same, the sum of Twenty-two 9212/10000 dollars ($22.9212) per lamp, or at the rate of Twenty-eight 75/100 ($28.75) per lamp, per annum, burning 3925 hours.

For furnishing all the above for each lamp, at each lamp, for 22,500 or more in number of same, in either the Borough of Manhattan or The Bronx, or both, the sum of Nineteen 7322/10000 dollars ($19.7322) per lamp, or at the rate of Twenty-four 75/100 ($24.75) per lamp, per annum, burning 3925 hours.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

MANTLE NAPHTHA LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

V. For furnishing and connecting, ready for use, each mantle lamp, using illuminating material other than gas, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-
9660 heads, the furnishing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lanterns, lamp-irons, frames and cross-heads thereto, as

specified and as noted in proposals, clauses Nos. 8 and 9, for the term of this contract, in the Borough of The Bronx, to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

MANTLE NAPHTHA LAMPS—LAMP-POSTS FURNISHED BY CONTRACTOR.

VI. For furnishing and connecting, ready for use, each mantle lamp, using illuminating material other than gas, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts
9661 and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lamp-posts, lanterns, lamp-irons, frames and cross-heads thereto, as specified and as noted in proposals clauses Nos. 8*a* and 9, for the term of this contract, in the Borough of The Bronx, to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

VII. For furnishing, maintaining and putting in place all the abovementioned items, excepting the cost of illuminating gas only,

as specified and as noted in clauses No. 7, No. 8 and No. 9 of the proposals, for the period of this contract, the sum of ..... Dollars ($.....).

VIII. For furnishing, maintaining and putting in place all the above mentioned items, excepting the cost, of illuminating gas only, as specified and as noted in clauses No. 7*a*, No. 8*a*, No. 8*b* and No. 9 of the proposals, for the period of this contract, the sum of ..... Dollars ($.....).

IX. For repair of lamp-posts and erection of new lamp-
9662 posts, for the term of this contract, in the Borough of the Bronx, when owned, furnished or hereafter acquired by The City:

(*a*) For each lamp-post straightened, the sum of ..... Dollars ($.....).

(*b*) For each column reloaded, the sum of ..... Dollars ($.....).

(*c*) For each column recalked, the sum of ..... Dollars ($.....).

(*d*) For each column refitted, the sum of ..... Dollars ($.....).

(*e*) For each service pipe refitted, the sum of ..... Dollars ($.....).

(*f*) For each stand pipe refitted, the sum of..... Dollars ($.....).

(*g*) For each lamp-post removed, the sum of..... Dollars ($.....).

(*h*) For each lamp-post reset, the sum of..... Dollars ($.....).

(*i*) For the erection of each new lamp-post, complete (with service and stand pipes when for gas), and with cross-heads, lamp-irons and lanterns in place, stating the price per post, the sum of ..... Dollars ($.....).

X. For furnishing illuminating gas of not less than 20 candle-power, when tested, as provided for gas street lamps, including the service pipes from the gas mains to the building and a proper meter for registering the gas, for the term of this contract, for each of the public buildings and offices in the Borough of The Bronx, the lighting of which is now, or hereafter may be, under the jurisdiction and control of the Department of Water Supply, Gas and
9663 Electricity, per 1,000 cubic feet, at a pressure of not less than one and one-half (1½) inches at the meter end of the house service pipe, in the sum of ..... Dollars ($.....).

CONSOLIDATED GAS CO. OF N. Y., [L. S.]
By W. R. ADDICKS, *Vice-President.* [L. S.]

COLIN C. SIMPSON,
Ass't Secretary.

[On the margin:] Name(s) of bidder(s). Each and every person bidding and named above must sign here. If the bidder is a corporation the corporate name must be signed, also the name and designation of the officer or agent signing for the corporation, and if practicable the seal of the corporation should be affixed.

THE CITY AND STATE OF NEW YORK,
County of New York, ss:

WALTER R. ADDICKS, being duly sworn, says for himself, that the several matters stated in the above estimate are in all respects true.

W. R. ADDICKS.

Subscribed and sworn to before me, this 15th day of March, A. D. 1905.

CORNELIUS A. LAUGHLIN,
Notary Public, New York County.

(Blanks for consent of Sureties and Affidavits on next leaf.)
[SEAL.]

[On the margin:] Signature(s) of bidder(s). This affidavit must be made by the person or persons bidding for the contract; in case of a firm, by each and every member of the firm; in the case of a corporation, by a duly authorized officer or agent having knowledge as to the facts stated.

SURETIES' AGREEMENT.

IN CONSIDERATION of the premises, and of One Dollar to us and each of us in hand paid by The City of New York, the receipt whereof is hereby acknowledged—

We, the undersigned, consent and agree, that if the con-
9664 tract for which the preceding estimate is made be awarded to the person, persons or corporation making the same, we will, upon its being so awarded, become bound as his, their or its sureties for its faithful performance; and if the said person, persons or corporation shall omit or refuse to execute such contract, if so awarded, and give the proper security within five days after the written notice that the same is ready for execution, we will pay, without proof of notice or demand, to the said The City of New York, or its successors, any difference between the sum to which such person, persons or corporation would be entitled upon the completion of such contract and the sum which The City of New York may be obliged to pay to the person, persons or corporation to whom the contract shall be awarded at any subsequent letting; the amount in each case to be calculated upon the estimated amount of the SUPPLIES and WORK by which the bids are tested.

This consent must be signed by the two sureties, with their places of business or residence added.

IN WITNESS WHEREOF, we have hereunto set our hands, this 15th day of March, one thousand nine hundred and five.

THE UNITED STATES FIDELITY & GUARANTY COMPANY.
By SYLVESTER J. O'SULLIVAN,
Manager.

Name of first surety,
Address of first surety,

Name of second surety,
Address of second surety,

Attest:
GEORGE E. HAYES,
Attorney in Fact.

The adequacy and sufficiency of the above-named sureties approved.

Dated this ..... day of ....., 1905.

.....,

[SEAL.] *Comptroller.*

THE CITY AND STATE OF NEW YORK, *County of ....., ss:*

The above-named ..... being duly sworn, says that he is a householder or freeholder in The City of New York, and is worth the sum of..... Dollars ($.....) being the amount of the security required for the completion of the contract above referred to, over and above all his debts of every nature, and over and above his liabilities as bail, surety and otherwise, that he has offered himself as a surety in good faith, and with an intention to execute the bond required by law.

.....

[On the margin:] NOTE: If the surety is a householder but not a freeholder, the word freeholder must be erased. If a freeholder but not a householder, the word householder must be erased. Each of these depositions must be signed by one of the proposed bondsmen and sworn to.

Subscribed and sworn to before me this ..... day of ..... A. D. 1905.

.....,

Notary Public or Commissioner of Deeds.

THE CITY AND STATE OF NEW YORK, *County of ....., ss:*

The above-named ..... being duly sworn, says that he is a householder or freeholder in The City of New York, and is worth the sum of ..... Dollars ($.....) being the amount of the security required for the completion of the contract above referred to, over and above
9666 all his debts of every nature, and over and above his liabilities as bail, surety and otherwise, that he has offered himself as a surety in good faith, and with an intention to execute the bond required by law.

.....

Subscribed and sworn to before me, this ..... day of ..... A. D. 1905.

.....

Notary Public or Commissioner of Deeds.

STATE OF NEW YORK, *County of New York, ss:*

On the 15th day of March, in the year 1905, before me personally came Sylvester J. O'Sullivan, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he was Manager of The United States Fidelity and Guaranty

Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order. And the said Sylvester J. O'Sullivan, further said that he was acquainted with George E. Hayes, and knew him to be the Attorney-in-fact of said Company; that the signature of the said George E. Hayes, subscribed to the foregoing instrument, was in the genuine handwriting of said George E. Hayes, and was subscribed thereto, by like order of said Board of Directors, and in presence of him, the said Sylvester J. O'Sullivan.

GEO. FRANK SWEENEY,
Commissioner of Deeds, New York City.

9667 STATEMENT.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

Home Office:

BALTIMORE, MD.

At the close of Business, September 30, 1904.

Commenced Business August 1, 1896.

ASSETS.

Real Estate	$422,302.27
United States Bonds	84,050.00
Baltimore City, State and Municipal Bonds	1,579,528.92
Railroad Bonds	2,215.00
Bank Stocks	18,310.00
Railroad Stocks	41,800.00
Other Stocks	182,500.00
Cash in Banks and Home Office	440,981.43
Premiums Due from Agents, Less Commissions	322,027.42
Loans on Mortgages	19,050.00
Loans on Collateral	55,103.78
Ground Rents	1,000.00
Due for Subscriptions Dept. Guaranteed Atty's	36,807.00
Advancel a/c Contracts Secured	162,447.83
Interest Due and Accrued	21,177.34
	$3,389,300.99

LIABILITIES.

Capital Stock Paid in Cash	$1,700,000.00
Re-Insurance Reserve	1,053,623.48
Reserve for Unadjusted and Resisted Claims	213,843.58
Collateral Deposits	111,981.64
Surplus and Undivided Profits	309,852.29
	$3,389,300.99

9668 STATE OF NEW YORK, *County of New York, ss:*

George E. Hayes, being duly sworn, says, that he is the Attorney-in-fact of the United States Fidelity and Guaranty Company, and that, to the best of his knowledge and belief, the foregoing is a true and correct statement of the financial condition of said Company, as of September 30, 1904.

GEORGE E. HAYES.

Subscribed and sworn to before me this 15th day of March, 1905.

[SEAL.] GEO. FRANK SWEENEY,
Commissioner of Deeds,
New York City.

9669 No. .....

THE CITY OF NEW YORK,

DEPARTMENT OF

WATER SUPPLY, GAS AND ELECTRICITY.

BID OR ESTIMATE

For Furnishing Gas or other Illuminating Material for, and for Lighting, Extinguishing, Cleaning, Repairing and Maintaining the Public Lamps (and Supplying Gas, etc., for New Lamps, when required), and for making certain Repairs to Lamp-posts, and for Furnishing Burners and Appliances of Improved System of Lighting on Streets, Public Buildings, Avenues, Piers, Parks and Public Places, in the Borough of The Bronx, in The City of New York, for the term of nine months and sixteen days, from March 16, 1905, to December 31, 1905.

THE CITY OF NEW YORK.

.....1905.

.....Estimator.

9670 CITY'S EXHIBIT 3 A.

No. .....

Name of Bidder .....
Address .....

THE CITY OF NEW YORK,

DEPARTMENT OF

WATER SUPPLY, GAS AND ELECTRICITY,

Borough of .....

1905.

PROPOSALS FOR BIDS OR ESTIMATES

FOR GAS AND NAPHTHA LAMPS, ETC.

1. Sealed Bids or Estimates will be received at the office of the Department of Water Supply, Gas and Electricity, Room 1536, No. 21 Park Row, in The City of New York, until 2 o'clock P. M., on ..... Day ....., 1905.

[Ordinances, Section 351.]

[Title.]

[Ordinances, Section 354.]

For Furnishing Gas or other Illuminating Material for, and for Lighting, Extinguishing, Cleaning, Repairing and Maintaining the Public Lamps (and Supplying Gas, etc., for New Lamps when required), and for Making Certain Repairs to Lamp-posts, and for Furnishing Burners and Appliances of Improved System of Lighting on Streets, Public Buildings, Avenues, Piers, Parks and Public Places, in the Borough of ....., in The City of New York, for the term Nine Months and Sixteen Days, from March 16, 1905, to December 31, 1905, both inclusive.

[Ordinances, Section 346.]

2. The amount of security required is TWENTY-FIVE (25) PER CENTUM of the total amount of bid or estimate.

9671 Furnishing estimate.—3. The person or persons making an estimate shall furnish the same in a sealed envelope, indorsed with the title given above, of the work for which the estimate is made, with his or their name or names and the date of presentation to the head of the Department, at the said office, on or before the date and hour above named, at which time and place the estimates

received will be publicly opened by the head of the Department and read, and the award of the contract made according to law as soon thereafter as practicable.

Number of lamps.—4. In the whole Borough of ....., the total number of ordinary gas lamps now burning is about .....; the total number of Welsbach gas lamps now burning is about .....; the total number of Welsbach naphtha lamps now burning is about .....; the total number of ordinary naphtha lamps now burning is about .....; but the Commissioner of Water Supply, Gas and Electricity reserves the right to designate the location and number of the lamps of each kind as to districts, streets, avenues, piers, parks and public places or parts thereof. Bidders must satisfy themselves by a personal examination of the number and kind of lamps required in each Borough, as numbers given above must be taken only as a close approximation of the number of lamps that may be required.

Number of lamps in district to be stated.—5. Bidders are required to state in their estimates the districts or several streets, avenues, piers, parks and places, or parts of streets, avenues, piers, parks and places in which they propose to perform the requirements herein contained, giving also the number of lamps they propose to supply.

9672 Gas and naphtha lamps.—6. The burners for open flame or mantle gas lamps will be of such a kind and construction that they will burn not less than three cubic feet of gas per hour under a pressure of not less than 1½ inches. The gas furnished shall have an illuminating power of not less than 20 candles when tested by photometric test at a distance of not less than one mile from the place of manufacture, and bidders will state the price per lamp for the term of this contract for gas of the illuminating power, and in the quantity and at the pressure specified. If open flame and mantle lamps shall use illuminating material other than gas, then the burners to be used for such illuminating material will be of such kind and construction that they shall give a light (by photometric test) equal to the light given by the three-foot open flame or mantle gas burners of similar type as used in the public lamps in The City of New York, furnished with 20-candle-power gas.

Illuminating power.—Bidders are required to state the illuminating or candle power of the gas they propose to furnish when tested at a distance of not less than one mile from the place of manufacture, and bidders proposing to furnish any illuminating material other than illuminating or coal gas must state distinctly what kind and grade of material they propose to furnish, and the illuminating power of the light they propose to furnish. When the term "illuminating material other than gas" is used in these proposals or the annexed contract and specifications, it shall mean either naphtha or gasolene.

Open flame gas or naphtha lamps, lamp-posts, etc., owned by The City.—7. Bidders will state in their bids or estimates a price per lamp

for the term of this contract, for furnishing gas or illuminating material other than gas to the public lamps in the Borough of and for other fixtures or appliances for illuminating material for each open flame gas or naphtha lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, replacing and repairing of the cocks, tubes and burners, the replacing of lamp-posts, cross-heads, lamp-irons and lanterns, which lamp-posts, cross-heads, lamp-irons and lanterns now owned or hereafter acquired by The City of New York, will be furnished to the Contractor by the said City, and put in place by him as required for the amount of this bid, with the exception of lamp-posts. The repairing, replacement or erection of lamp-posts owned by The City to be as per bid on clause No. 10 in this proposal.

9673

Open flame naphtha lanterns, lamp-posts, etc., furnished by Contractor.—7*a*. A price for furnishing illuminating material other than gas to the public lamps in the Borough of , and for other fixtures or appliances for illuminating material other than gas, including lighting, cleaning, extinguishing, reglazing and painting of lanterns, the painting of lamp-posts, lamp-irons and cross-heads, the furnishing, replacing and repairing of the cocks, tubes, burner appliances, lanterns, lamp-irons, cross-heads and lamp-posts, all the above, for each lamp, at each lamp, to be furnished by the Contractor and erected by him as required for the term of this Contract for the amount of this bid.

Mantle gas or naphtha lanterns, lamp-posts, etc., owned by The City.—8. A price for furnishing lanterns complete, including cross-heads, lamp-irons and improved burner appliances and incandescent mantles for gas or naphtha burners to produce a light of not less than sixty (60) candle power each, and including the illuminating material for each lamp, at each lamp, in the Borough of , lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns, lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, replacing and repairing of the mantles, cocks and burning appliances, the replacing of lamp-posts, cross-heads, lamp-irons and lanterns, which lamp-posts, when owned or hereafter acquired by The City of New York, will be furnished to the Contractor by the said City and put in place by him, as required for the amount of this bid, with the exception of lamp-posts. The repairing, replacement or erection of lamp-posts owned by The City to be as per bid on clause No. 10 in this proposal.

9674

Mantle naphtha lanterns, lamp-posts, etc., furnished by Contractor.—8*a*. A price for furnishing lanterns complete, including lamp-irons, cross-heads, incandescent mantles and improved burning appliances for illuminating material other than gas to produce a light of not less than sixty (60) candle power each and including illuminating material other than gas for each lamp, at each lamp, in the Borough of , the lighting, extinguishing, cleaning, reglazing and painting of lanterns, the painting of

lamp-posts, lamp-irons and cross-heads, the furnishing, replacing and repairing of mantles, cocks, burning appliances, lanterns, lamp-irons, cross-heads and lamp-posts, all the above to be furnished by the Contractor and erected by him as required for the term of this contract for the amount of this bid.

8*b*. A price for furnishing, maintaining and putting in place all the above mentioned items, excepting the cost of illuminating material in case of gas only, with lamp-posts as above noted, for the period of this contract.

9675 Lamp-posts.—9. All lamp-posts for use with gas or naphtha lanterns to be erected in new locations will be provided for the term of this contract by The City of New York, and the erection of same shall be charged for at the prices given for this item in clause No. 10 of this proposal.

(*a*) In the Boroughs of Manhattan, The Bronx and Brooklyn, the lamp-posts for gas lamps are almost entirely owned by The City, and The City will continue to supply same. In these, or other boroughs where any lamp-posts used for naphtha or gas lighting, either mantle or open flame, may belong to the Contractor, and are not to be replaced by a later successful bidder, the right is reserved to The City of New York to substitute its own lamp-posts for these if it so desires. If The City does furnish these lamp-posts, they shall be erected by the Contractor for the charge specified for this item in the bid on clause No. 10 in this proposal; but when these lamp-posts are now owned or furnished by the Contractor, all repairs and renewals shall be made by him without any charge to The City.

(*b*) Where one contractor shall replace the lanterns or lamp-posts, or both, owned by another, on account of a change in the contractor from the previous successful bidder to the successful bidder on this contract, then the first erection of lamp-posts and lanterns by the successful bidder, lamp-post for lamp-post, replacing those that may then exist shall be made with no further charge to The City of New York, although The City may exercise its right to supply its own lamp-posts.

Lanterns.—(*c*) The cross-heads, lamp-irons and lanterns used for open flame gas lamps in the Borough of Manhattan, The
9676 Bronx, and Brooklyn are almost entirely owned by The City of New York, and The City will continue to supply same. In these or other boroughs where gas lanterns may belong to the Contractor, he shall furnish same, including all repairs and renewals, without any additional charge to The City.

Lanterns, burning appliances, lamp-irons and cross-heads for open flame naphtha lamps shall be furnished by the Contractor for the term of this contract for the amount of this bid.

Any other contractor bidding successfully, where lanterns are not owned by The City, must supply same, including all repairs and renewals, without any additional charge to The City.

(*d*) In all boroughs, the above conditions and reservations as to the furnishing, repairing, replacing and painting of lamp-posts, cross-heads, lamp-irons and lanterns in the above clauses, No. 7, No. 7*a*, No. 8, No. 8*a*, No. 8*b*, No. 9, No. 9*a*, No. 9*b*, and No. 9*c* shall

apply as the ownership of said lamp-posts, cross-heads, lamp-irons and lanterns shall appear, but nothing in the above shall be construed that The City of New York obligates itself to supply new lamp-posts in place of those now erected, but not owned by it, unless it so desires.

10. Bidders will state in their bids a price for the repair of lamp-posts, owned or supplied by The City, for use with gas or naphtha lamps, including straightening and releading, and for each new lamp-post fitted up, as follows:

(*a*) For each lamp-post straightened, stating the price per post.

(*b*) For each column releaded, stating the price per post.

9677 (*c*) For each column recalked, stating the price per post.

(*d*) For each column refitted, stating the price per post.

(*e*) For each service pipe refitted, stating the price per post.

(*f*) For each stand pipe refitted, stating the price per post.

(*g*) For each lamp-post removed, stating the price per post.

(*h*) For each lamp-post reset, stating the price per post.

(*i*) For the erection of each *new* lamp-post (complete with service and stand pipes, when for gas), and with cross-heads, lamp-irons and lanterns in place, stating the price per post.

Gas for public buildings.—11. Bidders will state in their bids or estimates a price per thousand cubic feet of gas of not less than 20 candle power for all or any of the public buildings or offices in the Borough of ....., the lighting of which is now, or hereafter may be, under the jurisdiction and control of the Department of Water Supply, Gas and Electricity. This price will include, in all boroughs, the service pipes from the gas mains to the building, and a proper meter for registering the consumption of gas.

Alterations, etc.—12. Should any alteration, change, replacement or any attachment be required to the whole or any portion of the lamps or lamp-posts, except as mentioned in these proposals and specifications, for which estimates are made, in conse-

9678 quence of the use of improved appliances for the gas or naphtha lighting under this contract, then such alteration shall be done and such attachment placed on the posts without expense to The City.

Reservation.—13. The right is reserved to the Commissioner to determine and designate in any locality, at any time after the estimates are opened, what illuminating material shall be used in the public lamps, or any number of them, in such locality, during the term of this contract; also, upon such determination, to decline any estimate, or part thereof, for lighting such locality with illuminating material other than that so determined upon; also to decline all estimates for any particular locality, or all localities, if deemed for the best interests of The City.

Time to connect to lamp-posts.—14. If the estimate of any bidder shall include any lamp-posts with which the pipes or conductors of such bidder are not connected at the time of the making of the bid, and a contract for furnishing the illuminating material for any such lamp-posts shall be awarded to such bidder, in that case, **THIRTY DAYS from the date of the execution of such**

contract, and such further time, not exceeding thirty days, as may be deemed reasonable by the Commissioner, shall be allowed to such bidder in which to connect such pipes or conductors with such lamp-posts, and all such connections shall be made by the Contractor without expense to The City.

Payment reserved.—15. No payment to such bidder, on account of any such lamps, will be made for the time so allowed, nor until the same shall have been connected with the mains or conductors of such bidder, nor except for the time during which all
9679 the requirements in this proposal and in the contract, including specifications, which shall be awarded and entered into under this proposal, shall have been fully performed.

Determination of lights.—16. The number, kind and location of lights to be furnished under the contract to be awarded and entered into under this proposal shall be determined and prescribed by the Commissioner.

Responsibility of bidders.—17. No bid will be entertained unless the Commissioner shall be satisfied that the party or parties bidding are possessed of sufficient plant to carry out the provisions of the contract.

Award of contracts.—18. The award of any and all contracts under this proposal, and all contracts entered into in pursuance of said proposal, will be subject and subordinate to the rights of all persons, parties or corporations under contracts or agreements (if there are any such) which are now binding and obligatory upon The City of New York.

Burning hours.—19. The number of hours the gas or naphtha lamps are to be kept burning during the contract is 2,966 5-60 at the rate of 3,925 hours per year as per time-table attached.

Form of estimate.—20. Bidders will *write out* the total amount of their estimates in addition to inserting the same *in figures.*

Rejection.—21. The Commissioner reserves the right to reject any or all bids or estimates if the Board of Estimate and Apportionment shall determine it is for the public interest of The City so to do.

[Charter, section 530.]

Identity of bidders.—22. Each bid or estimate shall contain the name and place of residence of the person making the same, the names of all persons interested with him
9680 therein, and if no other person be so interested it shall distinctly state that fact; also that it is made without any connection with any other person making an estimate for the same purpose, and is in all respects fair, and without collusion or fraud; and that no member of the Board of Aldermen, head of a department, chief of a bureau, deputy thereof, or clerk therein, or other officer of The City of New York, is, shall be, or become interested, directly or indirectly, as contracting party, partner, stockholder, surety or otherwise in, or in the performance of the contract, work or business to which it relates, or in any portion of the profits thereof. The bid or estimate must be verified by the oath, in writing, of the party making the estimate that the several

[Ordinances, section 347.]

[Charter, section 1533.]

matters stated therein are in all respects true; or, if the bidder is a corporation, by the oath, in writing, of an officer of such corporation, with knowledge of the facts and having authority to make such sworn statement.

Sureties.—23. Each bid or estimate shall be accompanied by the consent, in writing, of two householders and freeholders in The City of New York, or of a guaranty or surety company, duly authorized by law to act as surety, and shall contain the matters set forth in the blank forms mentioned below.

[Ordinances, section 349.]

Check with estimates.—24. No bid or estimate will be considered unless accompanied by money or a certified check drawn on a National or State Bank located in The City of New York, to the order of the Comptroller, to the amount of five per centum of the amount of the bond required, as provided in section 420 of The Greater New York Charter.

[Charter, section 420.]

Particulars of work.—25. For particulars as to the repairs or the quantity or quality of the supplies, or the nature and extent of the work, reference must be made to the specifications on file in the Department.

9681

Forms for estimates.—26. Bidders are requested to make their bids or estimates upon the blank form prepared by the Commissioner, a copy of which, with the proper envelope in which to inclose the bid, together with a copy of the contract, including the specifications, in the form approved by the Corporation Counsel, can be obtained upon application therefor at the office of the Commissioner of Water Supply, Gas and Electricity, Room 1321, No. 21 Park Row, The City of New York.

THE CITY OF NEW YORK....., 1905.

JOHN T. OAKLEY,
Commissioner of Water Supply, Gas and Electricity.

9682 THE CITY OF NEW YORK,

DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY,

BOROUGH OF.....

CONTRACT AND SPECIFICATIONS

For Furnishing Gas or other Illuminating Material for, and for Lighting, Extinguishing, Cleaning, Repairing and Maintaining the Public Lamps (and Supplying Gas, etc., for New Lamps when required), and for making certain Repairs to Lamp-posts and for furnishing Burners and Appliances of Improved System of Lighting Streets, Public Buildings, Avenues, Piers, Parks and Public Places, in the Borough of ....., in The City of New York, for the term of Nine Months and Sixteen Days, from March 16, 1905, to December 31, 1905, both inclusive, per Specifications and Proposals herein contained or hereto attached.

Parties.—THIS AGREEMENT, made and entered into this .... day of ....., in the year one thousand nine hundred and five, by and between The City of New York, by the Commissioner of Water Supply, Gas and Electricity, party of the first part, and .....
.....
.....
Contractor , party of the second part, pursuant to the provisions of The Greater New York Charter,

9683 Covenant.—WITNESSETH, That the parties to these presents, each in consideration of the agreements on the part of the other, herein contained, have mutually agreed and hereby mutually agree, the party of the first part for itself and its successors, and the party of the second part for itself and its successors, as follows:

Parties described.—(*A*) Wherever in this contract the words "The City," or "The Commissioner," or a pronoun in the place of either of them is used, they shall mean and intend the party of the first part or the Commissioner of Water Supply, Gas and Electricity of The City of New York; wherever the words "Borough President" are used in this contract they shall mean and intend the President of the Borough above mentioned; wherever in this contract the words "the Department," or a pronoun in place of them is used, they shall mean and intend the Department of Water Supply, Gas and Electricity in The City of New York.

(*B*) Wherever in this contract the word "Contractor" or a pronoun in the place of it, is used, the same shall mean and intend the party of the second part to this agreement.

"Engineer" described.—(*C*) Whenever the word "Engineer" is used in this contract, it shall mean and be taken to mean and in-

tend the Engineer of the Bureau of Lamps and Gas of the Department, or the Engineer, or other person or official in charge of the Lighting Bureau of the borough for which this contract is made, acting either directly or through any Assistant or Inspector duly appointed or designated therefor, pursuant to The Greater New York Charter, as amended, by the Engineer or either of the
9684 Engineers, to inspect, test, examine and accept the supplies of gas or other illuminating material, repairs or supplies, which are the subject of this contract, limited by the particular duties intrusted to him.

Subject matter.—(*D*) The Contractor will furnish and deliver to the party of the first part, at the Contractor's own cost and expense, at the times and places and in the manner and under the conditions herein specified, gas or other illuminating material for, and light, extinguish, clean, repair and maintain the public lamps (and supply gas, etc., for new lamps when required), and make certain repairs to lamp-posts, and furnish burners and appliances of improved system of lighting on the streets, public buildings, avenues, piers, parks and public places in the Borough of ....., in The City of New York, for the term of 9 months and 16 days from March 16th, 1905, to December 31st, 1905, both inclusive, and will accept as full compensation therefor the sum or price hereinafter named, which sums or prices are the amounts at which this contract was awarded to the Contractor at the public letting thereof. The said specifications, the proposal for bids or estimates, the bid or estimate and the bond required are and shall be a part of this contract.

No extra compensation.—(*E*) The Contractor will not ask, demand, sue for or recover for any supplies delivered, repairs made, illuminating material furnished, or work performed under this contract, any extra compensation beyond the amounts payable for the several classes of work and supplies herein enumerated, which shall be actually supplied at the price therefor, herein agreed upon and fixed.

Inspection.—(*F*) The Engineer shall inspect and test or
9685 have tested the gas or other illuminating material, lamps, meters, regulators, repairs and supplies furnished, and see that the same strictly correspond with the specifications hereinafter set forth, and the Engineer is hereby authorized and empowered to reject any of the said gas or other illuminating material, lamp-posts, lamps, meters, regulators, repairs and supplies offered under this contract, for the reason that the same do not comply in quality, or quantity, or pressure, or time or place of maintenance, with the specifications herein contained or hereto annexed.

Engineer's substitute.—(*G*) Whenever the Engineer shall be unable to act, in consequence of absence or other cause, then such assistant or other persons as shall be designated by the Commissioner shall perform all the duties and be vested with all the power herein given to the Engineer.

Arbitration.—(*H*) To prevent all disputes and litigations, the Engineer shall. in all cases, determine the amount, quantity and quality of the supplies, illuminating material, and work, which are

to be paid for under this contract, and he shall determine all questions in relation to said gas or other illuminating material, repairs and supplies, and he shall in all cases decide every question which may arise relative to the execution of this contract on the part of the Contractor, and his estimate and decision shall be final and conclusive.

Explanation.—(*I*) Any doubt as to the meaning of the contract, including the specifications, or any obscurity as to the wording of them, will be explained by the Engineer, and all directions and explanations required, alluded to, or necessary to complete any of the provisions of these specifications, and give them due effect, will be given by the Engineer.

9686 Time of beginning and completing work.—(*J*) The Contractor shall commence the delivery of the lamps and other apparatus called for by this contract, and the furnishing of the illuminant required, and the lighting of the lamps, as soon as he shall be ordered so to do by the Commissioner; he will carry on such contract as required from time to time, with such force and in such manner and order, and at such times and seasons, as may be directed by the Commissioner, and that he will fully and entirely perform this contract on his part on the 31st day of December, 1905.

[Ordinances, section 354.]

Liquidated damages.—(*K*) In case any lamp shall fail to burn continuously throughout each and every night, during the term of this contract, during the hours specified in the time-table hereto annexed, or such hours as the Commissioner may from time to time prescribe, and such failure shall not be due to any act or omission of The City, its officers, agents, or employees, the Contractor shall and will pay to The City a sum of money equal to one two hundred and ninetieth (1/290) of the contract price of such lamp for the term of this contract, for each and every night or part thereof that such failure shall continue, which said sum, in view of the difficulty of ascertaining the loss which The City will suffer by reason of such failure, is hereby agreed, fixed and determined by the parties nereto, as the liquidated damages that The City will suffer by reason of such failure, and not as a penalty, and The City shall and may deduct and retain the amount of such liquidated damages out of any moneys which may be due or become due to the Contractor under this agreement.

Extension of time.—(*L*) Neither an extension of time, for any reason, beyond the date fixed for the delivery of supply of

9687 gas, or other illuminating material, lamps, repairs and supplies, nor the delivery and acceptance of any said delivery of supply of gas, repairs and supplies, called for by this contract, shall be deemed to be a waiver by the Commissioner of the right to abrogate this contract for abandonment or delay in the manner herein provided.

Skilful workmen.—(*M*) The Contractor will employ only competent, skilful and faithful men to do the work, and he further agrees that whenever the Commissioner shall inform him in writing that any man engaged in the work is, in his opinion, incom-

petent or unfaithful, he will discharge him from the work and will not again employ him upon the work.

Prices.—(*N*) The Contractor shall receive the following prices as full compensation for furnishing and maintaining the lights, lamps, apparatus and accessories, and performing the services herein provided to be performed by the Contractor, viz.:

9688 OPEN FLAME GAS LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

I. For furnishing illuminating gas (of not less than 20 candle-power to burners consuming 3 cubic feet of gas per hour, by photometric test, made at a distance of not less than one mile from the place of manufacture) for each lamp, at each lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes and burners, the replacing of cross-heads, lamp-irons and lanterns, and the replacing and repairing of lamp-posts when owned by the Contractor, as specified and as noted in proposals, clauses Nos. 7 and 9, for the term of this contract, in the Borough of ..... to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

9689 OPEN FLAME NAPHTHA LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

II. For furnishing illuminating material other than gas for each lamp, at each lamp, including the lighting, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burners, burning appliances, lanterns, lamp-irons and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 7 and 9, for the term of this contract, in the Borough of ..... to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, tne sum of ..... Dollars ($.....) per lamp.

9690 OPEN FLAME NAPHTHA LAMPS—LAMPS-POSTS FURNISHED BY CONTRACTOR.

III. For furnishing illuminating material other than gas for each lamp, at each lamp, including the light, extinguishing, cleaning, repairing, reglazing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burners, burning appliances, lamp-posts, lanterns, lamp-irons and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 7*a* and 9, for the term of this contract, in the Borough of ....., to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

9691 MANTLE GAS LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

IV. For furnishing and connecting, ready for use, each mantle gas lamp, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it, including illuminant. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnish-

ing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lanterns, lamp-irons, frames and cross-heads thereto, and repairing and replacing of lamp-posts when owned by the Contractor, as specified and as noted in proposals, clauses Nos. 8 and 9, for the term of this contract, in the Borough of ..... to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

9692 MANTLE NAPHTHA LAMPS—LAMP-POSTS OWNED OR FURNISHED BY THE CITY.

V. For furnishing and connecting, ready for use, each mantle lamp, using illuminating material other than gas, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lanterns, lamp-irons, frames and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 8 and 9, for the term of this contract, in the Borough of ..... to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

9693 MANTLE NAPHTHA LAMPS—LAMP-POSTS FURNISHED BY CONTRACTOR.

VI. For furnishing and connecting, ready for use, each mantle lamp, using illuminating material other than gas, with improved burner appliances and incandescent mantles, including cocks, tubes, burners, mantles, globes, chimneys, rods and regulating apparatus, necessary for each lamp, at each lamp, and also operating and maintaining it. The operation and maintenance to include the lighting, extinguishing, cleaning, reglazing, repairing and painting of lanterns and lamp-irons, the painting of lamp-posts and cross-heads, the furnishing, repairing and replacing of cocks, tubes, burner appliances, mantles, chimneys, globes, rods, regulating apparatus, lamp-posts, lanterns, lamp-irons, frames and cross-heads thereto, as specified and as noted in proposals, clauses Nos. 8*a* and 9, for the term of this contract, in the Borough of ..... to wit:

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

9694 For furnishing all the above for each lamp, at each lamp, for ..... in number of same, the sum of ..... Dollars ($.....) per lamp.

VII. For furnishing, maintaining and putting in place all the above-mentioned items, excepting the cost of illuminating gas only, as specified and as noted in clauses No. 7, No. 8 and No. 9 of the proposals, for the period of this contract, the sum of..... .....Dollars ($.....).

VIII. For furnishing, maintaining and putting in place all the above-mentioned items, excepting the cost of illuminating gas only, as specified and as noted in clauses No. 7*a*, No. 8*a*, No. 8*b* and No. 9 of the proposals, for the period of this contract, the sum of..... .....Dollars ($.....).

IX. For repair of lamp-posts and erection of new lamp-posts, for the term of this contract, in the Borough of....., when owned, furnished or hereafter acquired by The City:

(*a*) For each lamp-post straightened, the sum of..... ..... Dollars ($.....).

(*b*) For each column reladed, the sum of..... ..... Dollars ($.....).

(*c*) For each column recalked, the sum of..... ..... Dollars ($.....).

(*d*) For each column refitted, the sum of..... ..... Dollars ($.....).

9695 (*e*) For each service pipe refitted, the sum of..... ..... Dollars ($.....).

(*f*) For each stand pipe refitted, the sum of..... ..... Dollars ($.....).

(*g*) For each lamp-post removed, the sum of..... ..... Dollars ($.....).

(*h*) For each lamp-post reset, the sum of..... ..... Dollars ($.....).

(*i*) For the erection of each new lamp-post, complete (with service and stand pipes when for gas) and with cross-heads, lamp-irons and lanterns in place, stating the price per post, the sum of..... ..... Dollars ($.....).

X. For furnishing illuminating gas of not less than 20 candle-power, when tested, as provided for gas to street lamps, including the service pipes from the gas-mains to the building and a proper meter for registering the gas, for the term of this contract, for each of the public buildings and offices in the Borough of....., the lighting of which is now, or hereafter may be, under the jurisdiction and control of the Department of Water Supply, Gas and Electricity, per 1,000 cubic feet, at a pressure of not less than one and one-half (1½) inches at the meter end of the house service pipe, in the sum of .... Dollars ($.....).

9696 Payments only for complete performance.—(*O*) No payment will be made or allowed on account of supply of illuminating materials, repairs and supplies to any lamp, except for the time during which all the requirements herein mentioned shall have been fully performed in accordance with the specifications.

Suspension and relighting.—(*P*) In case the Contractor shall be unable at any time during the continuance of this contract to supply illuminating material to, or light any of the lamps specified in this agreement, then the Contractor shall give immediate notice to the Commissioner of his inability to furnish illuminating material to, or to light such lamps, stating the streets in which the supply of illuminating material to the lamps cannot be furnished and the cause thereof. And in case the use of any of the lamps shall be suspended or discontinued, and other lamps shall be used in consequence of such suspension or discontinuance, then the gas or other lamps which may have been suspended, or discontinued, shall not be supplied with illuminating material except pursuant to an order for such supply by the Commissioner.

Indemnity.—(*Q*) The Contractor shall indemnify and save harmless The City, its officers, agents and servants, and each of them, against and from all suits and actions of every name and description brought against them or any of them, including suits based on or arising out of the alleged infringement of any patent or patent right, and against, and from all damages and costs to which they or any of them may be put by reason of any such alleged infringement or by reason of injury to the person or property of another, resulting from

negligence or carelessness in the performance of the work to be done under this contract, or otherwise, or from any improper or
9697 defective material, machinery, implement or appliance used in performing the same, or from any act or omission of the Contractor or his agents or servants. So much of the moneys due to the Contractor under and by virtue of this agreement, as shall or may be deemed necessary by the Commissioner, shall or may be retained by The City until all such suits, actions and claims shall have been settled, and evidence to that effect furnished to the satisfaction of the Commissioner.

Failure to perform.—(*R*) In case the Contractor shall fail or neglect to keep the covenants herein contained, or any of them, or neglect to operate, repair, paint, clean or fit up the lamps as before mentioned, or any of them, the Commissioner may and shall have the power to cause such work to be performed by other parties, and to deduct the expense thereof, from any moneys which may be due or may become due to the Contractor, and to hold the Contractor and his sureties liable for the amount thereof, which may be in excess of the prices stipulated in this agreement; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed by the Contractor, he shall forfeit all claim to the difference.

Annulment of contract.—(*S*) If the Contractor shall not well and truly observe, perform, fulfill and keep all and singular the covenants and conditions hereinbefore mentioned and contained, on its part and behalf to be observed, performed, fulfilled and kept according to the true intent and meaning of these presents, then and in that case the Commissioner may and shall have the power, on the part of the said party of the first part, to declare this contract annulled and vacated, and thereupon it shall become and be thenceforth null and void.

9698 Payments.—(*T*) On or after the first day of each and every month during the term of this contract, the Contractor shall furnish proof to the satisfaction of the Commissioner that it has fully performed and fulfilled this contract in all the particulars and conditions aforesaid during the preceding month, and particularly that it has furnished the illuminating material of the quality hereinbefore specified, and that all the lanterns have been cleaned three times in each week of said month, and also that the gas burners have consumed three cubic feet of gas each per hour, as required by this contract, during all the time that the lamps were required to be kept lighted, and also proof to the satisfaction of the Commissioner as to all extinguishments of lamps, including the location of each lamp extinguished, the date and length of extinguishment in each case, whereupon the Commissioner shall certify the fact, and in his certificate state the amount to which the Contractor shall be entitled for all the duties performed by it during such preceding month, and annex thereto a requisition upon the Comptroller to pay the Contractor therefor the sum to which he shall be so entitled; and without such certificate and requisition the Contractor shall not be or become entitled to any payment under and in respect to the terms

of this contract, or for the light, lamps and accessories or in respect to services which were required to be done, or should have been done, in such preceding month. On the requisitions above provided being presented to the Comptroller of The City, he shall, within thirty days thereafter, pay to the Contractor the amount thereof in lawful money.

No estoppel.—(*U*) The City shall not, nor shall any department or officer thereof be precluded or estopped by any return or
9699 certificate made or given by the Commissioner, any Engineer or other officer, agent or appointee of The City under any provision of this agreement from at any time (either before or after the final completion and acceptance of the work and payment therefor pursuant to any such return or certificate) showing the true and correct amount and character of the work done and materials furnished by the Contractor, or any other person under this agreement, or from showing at any time that any such return or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the specifications; and The City shall not be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the specifications.

Comptroller's indorsement.—(*V*) This contract shall not be binding or of any force unless the Comptroller of The City shall indorse hereon his certificate that there remains unexpended or unapplied, as provided in The Greater New York Charter, a balance of the appropriation or fund applicable thereto sufficient to pay the estimated expense of executing this contract, as certified by the officers making the same.

[Charter, sections 149 and 413.]

Notice to Contractor.—(*W*) The residence or place of business given in the bid or estimate upon which this contract is founded, is hereby designated as the place where all notices, letters and other communications shall be served, mailed or delivered. Any notice, letter or other communication addressed to the Contractor and delivered at the above-named place, or deposited in a post-paid
9700 wrapper in any post-office box regularly maintained by the post-office shall be deemed sufficient service thereof upon the Contractor. The place named may be changed at any time by an instrument, in writing, executed and acknowledged by the Contractor and delivered to the Commissioner. Nothing herein contained shall be deemed to preclude or render inoperative service of any notice, letter or other communication upon the Contractor personally.

Prior rights considered.—(*X*) This contract shall be subject and subordinate to the rights, claims and demands of all persons, parties or corporations under contracts or agreements (if there are any such) which are valid and lawful charges and liabilities against The City of New York, and which the law requires shall be defrayed and answered unto by The City.

Personal attention.—(*Y*) The Contractor will give his personal attention constantly to the faithful prosecution of the work; he will

not assign, transfer, convey, sublet or otherwise dispose of this contract, or his right, title or interest in or to the same or any part hereof, without the previous consent in writing of the Commissioner indorsed hereon or hereto attached; and he will not assign, by power of attorney or otherwise, any of the moneys to become due and payable under this contract, unless by and with the like consent signified in like manner. If the Contractor shall, without such previous written consent, assign, transfer, convey, sublet or otherwise dispose of this contract, or of his right, title or interest therein, or any of the money to become due under this contract, to any other person, company or other corporation, this contract may, at the option of the Commissioner, be revoked and annulled and The City shall thereupon be relieved and discharged from any and all liability
9701 and obligations growing out of the same to the Contractor, and to his assignee or transferree; provided that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of his creditors, made pursuant to the statutes of the State of New York; and no right under this contract, or to any money to become due hereunder shall be asserted against The City in law or in equity, by reason of any so-called assignment of this contract, or any part thereof, or of any moneys to grow due hereunder, unless authorized as aforesaid by the written consent of the Commissioner.

Execution.—In Witness Whereof, The Commissioner of Water Supply, Gas and Electricity has hereunto set his hand and seal on behalf of The City, and the Contractor has caused its corporate seal to be hereunto affixed and its President and Secretary hereto to set their hands, and the parties hereto have executed triplicate copies hereof, one of which is to remain with the Commissioner, one other to be filed with the Comptroller of The City, and the third to be delivered to the Contractor, the day and date herein first above written.

.....[L. S.]
Commissioner of Water Supply, Gas and Electricity.

Contractor.

.....
President.
[SEAL.]

.....
Secretary.

Attest.....
Secretary.

9702 The City, County, and State of New York, *ss:*

On this ..... day of ..... 1905, before me personally came John T. Oakley, to me known and known to me to be the Commissioner of Water Supply, Gas and Electricity, the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as such Commissioner for the purposes therein mentioned.

.....,
Notary Public or Commissioner of Deeds.

THE CITY AND STATE OF NEW YORK,
County of ....., *ss:*

On this ..... day of ..... 1905, before me personally came ..... to me known and known to me to be the President of the..... Company, and ..... to me known and known to me to be the Secretary of the
9703 .....Company, who, being by me severally duly sworn, did depose and say, each for himself, as follows: The said ....that he resided in ..... that he is the President of said Company, and the said..... .....that he resided in..... .....that he is the Secretary of said Company, the Company described in and who executed the above instrument; that he knew the seal of said Company; that the seal affixed to the said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Company, and that by like order he thereto signed his name and official designation.

.....,
Notary Public or Commissioner of Deeds.

THE CITY AND STATE OF NEW YORK,
County of ....., *ss:*

On this ..... day of ..... 1905, before me personally came .... to me known and known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same for the purposes therein mentioned.

.....,
Notary Public or Commissioner of Deeds.

9704 KNOW ALL MEN BY THESE PRESENTS, THAT WE, ... of The City of New York, are held and firmly bound unto THE CITY OF NEW YORK, in the sum of ..... DOLLARS, lawful money of the United States of America, to be paid to THE CITY OF NEW YORK, or to its certain attorneys, successors or assigns, for which payment, well and truly to be made, we bind ourselves, and our several and respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this ..... day of ..... one thousand nine hundred and five.

WHEREAS, The above bounden .... by an instrument in writing, under its corporate seal duly attested, bearing even date

with these presents, and one part whereof is hereunto annexed, has contracted with The City of New York to furnish the Illuminating Material, Repairs and Supplies to the Public Lamps of The City of New York, as in said contract will more fully and at large appear:

Now, THEREFORE, The condition of the above obligation is such that if the said .....
.....
its successors or assigns, shall indemnify and save harmless
9705 The City of New York, its officers, agents, and servants, and each of them, against and from all suits and actions of every name and description brought against them or any of them, including suits and actions based on, or arising out of the alleged infringement of any patent or patent rights, and against and from all damages and costs to which they, or any of them, may be put by reason of any such alleged infringement, or by reason of injury to the person or property of another, resulting from negligence or carelessness in the performance of the work to be done under said contract, or otherwise, or from any improper or defective material, machinery, implement or appliance used in performing the same, or from any act or omission of the said.....
.....its agents or servants, and if the said.....
.....or its successors or assigns, shall well and truly, and in good, sufficient and workmanlike manner, perform, fulfill, observe, and keep the said contract, and each and every of the covenants, provisions, conditions and terms in said contract contained, or to be performed, fulfilled, observed and kept, then this obligation to be void; otherwise to remain in full force and virtue.

.....[L. S.]
.....[L. S.]
.....[L. S.]
.....[L. S.]

9706 THE CITY AND STATE OF NEW YORK,
County of ....., ss:

On this ..... day of ..... 1905, before me personally came .....
.....
to me known and known to me to be the persons described in and who executed the foregoing bond, and they severally acknowledged to me that they executed the same for the purposes therein mentioned.

.....,
Notary Public or Commissioner of Deeds.

THE CITY AND STATE OF NEW YORK,
County of ....., ss:

On this ..... day of ....., 1905, before me personally came .....
to me known and known to me to be the President of the.....

.....
Company, and ..... to me known and known to me to be the Secretary of the.....
.....Company, being by me severally duly sworn, did say, each for himself, as follows:

The said ..... that he was President of said Company, and the said ..... that he was Secretary of said Company; that he knew the corporate seal of said Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Company, and that by like order he thereto signed his name and official designation.

....,

Notary Public or Commissioner of Deeds.

9707 THE CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

I, ..., of said City, being duly sworn, do depose and say that I am a ..... holder in The City of New York, and reside at Number .....Borough of ..... in said City, and that I am worth the sum of .....DOLLARS, being the amount of security required for the completion of the above-mentioned contract, over and above all my debts and liabilities, including my liabilities as bail, surety and otherwise, and over and above all my property which is exempt by law from execution.

.....

Subscribed and sworn to before me this ..... day of ....., 1905.

....,

Notary Public or Commissioner of Deeds.

THE CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

I, ..., of said City, being duly sworn, do depose and say that I am a ..... holder in The City of New York, and reside at Number ..... Borough of ..... in said City, and that I am worth the sum of .....DOLLARS, being the amount of security required for the completion of the above-mentioned contract, over and above all my debts and liabilities, including my liabilities as bail, surety and otherwise, and over and above all my property which is exempt by law from execution.

.....

Subscribed and sworn to before me this ..... day of ....., 1905.

....,

Notary Public or Commissioner of Deeds.

9708 APPROPRIATION.

COMMISSIONER'S CERTIFICATE.

In conformity with the provisions of section 149 of The Greater New York Charter, it is hereby certified that the estimated cost of the work, materials and supplies required by the within contract, amounting to ..... DOLLARS ($.....), is chargeable to the appropriation of the Department of Water Supply, Gas and Electricity, for the year 1905, entitled "Lamps and Lighting, Borough ..... for 1905."

.....

Commissioner of Water Supply, Gas and Electricity.

Dated ....., 1905.

COMPTROLLER'S CERTIFICATE.

THE CITY OF NEW YORK, ...1905.

In pursuance of the provisions of section 149 of The Greater New York Charter, I hereby certify that there remains unapplied and unexpended a balance of the appropriation.....

.....

.....

applicable to this contract, sufficient to pay the estimated expense of executing the same, viz.: $.....

.....

Comptroller.

9709 SPECIFICATIONS

For Furnishing Gas or other Illuminating Material for, and for Lighting, Extinguishing, Cleaning, Repairing and Maintaining Public Lamps (and Supplying Gas, etc., for New Lamps when required), and for making certain Repairs to Lamp-posts, and for Furnishing Burners and Appliances of Improved System of Lighting of Streets, Public Buildings, Avenues, Piers, Parks and Public Places, in the Borough of ....., in The City of New York, for the Term of Nine Months and Sixteen Days, from March 16, 1905, to December 31, 1905, both inclusive.

Lighting.—1. The lamps shall be lighted during such times as the public lamps throughout The City of New York may be required to be lighted by the regulations of the said party of the first part, in accordance with a time-table hereto annexed, marked "A," and made a part of these specifications. The Commissioner may direct and require, by notice of that effect, that all or any portion of said public lamps shall be lighted, and kept burning, at any

other time or times during the continuance of this contract; and the Contractor shall and will light the same, and continue them burning, in accordance with any and every direction of the Commissioner to that effect. Provided, that if, in compliance with the direction of the Commissioner, the whole number of hours during which the said lamps, or a portion of them, are kept burning, shall exceed the number of hours specified in the said time-table, which time-table shall aggregate a total of 2966 5-60 hours for the
9710 term, then, in that case, the Contractor shall be entitled to claim, and receive, for such additional number of hours during which the lamps, or such portion of them, in the district aforesaid, are kept burning, in accordance with such direction of the Commissioner, an additional compensation, equivalent to a pro rata increase of the compensation allowed by the foregoing contract and proportioned to the increased number of hours beyond the said number, and the number of lamps so kept burning. And also, provided that if, in compliance with the direction of the Commissioner, the number of hours during which the said lamps, or any portion of them, are kept burning, shall be less than the aforesaid number of 2966 5-60 hours per term, then, in that case there shall be deducted an amount equivalent to a pro rata decrease of the compensation allowed by the foregoing contract and proportioned to the decrease of the number of hours below the said number, and to the decrease of the number of lamps so kept burning. If the lamps are to be lighted by means of gas or naphtha, then it is expressly agreed that all the lamps shall be lighted within one hour from the time fixed in the time-table as the time for beginning; and it is also expressly agreed that all the lamps shall be extinguished within fifty (50) minutes from the time fixed in the time-table as the time for the beginning of extinguishing. It is also agreed that they shall be lighted either by means of a torch or the use of a ladder, and that the lamplighters will not be permitted to climb the lamp-posts for such a purpose. The Contractor shall keep the service pipes and stand pipes in said lamps free from all obstructions, at his own cost and expense.

Increasing or diminishing of lights.—2. The Commissioner shall have the right at any time to increase or diminish the num-
9711 ber of lamps required to be lighted by the Contractor under this contract, and the right is reserved by the Commissioner, at any time during the continuance of this contract, to increase or diminish the number of hours during which the said lamps or any portion of them are to be kept burn , and to change said time-table in any particular, and to determ e and from time to time to change the said number and location of the lights in any public building or office, and the amount and kind of illuminating material used and to be used therein, and the public buildings and offices and parts thereof lighted and to be lighted under the foregoing contract.

Illuminating material, quality of.—3. If the material to be furnished under this agreement shall be illuminating gas, then such gas shall have an illuminating power of not less than twenty candles, when tested at a distance of not less than one mile from the place

of manufacture, on the improved form of the Bunsen Photometer, by means of a Bray slit, Union No. 7 burner, consuming five cubic feet of gas per hour. The testing candle shall be of sperm, of six to the pound, and consuming, as near as possible, one hundred and twenty grains of spermaceti per hour; and no test shall be recorded in which the candle consumes less than one hundred and fourteen or more than one hundred and twenty-six grains of spermaceti per hour. And as regards purity, gas shall be clean and of such quality that it will not deteriorate the mantles in the mantle lamps using same so as to shorten their length of life under similar conditions. The gas shall be entirely free, within limits not injurious to the public health, from ammonia, sulphureted hydrogen
9712 and other sulphur of noxious compounds. In case the illuminating material shall be illuminating material other than gas, then the quantity of light produced by the burner used for such material shall be equal to the quantity (by photometric test) produced by the twenty candle-power gas, above described, consumed by the three-foot gas burners called for in this agreement.

Test of illuminating power of lantern.—4. The City shall have the right at any time to test the quality and illuminating power of the lamps and light as furnished on the street, and for that purpose at least twenty-five (25) lamps may be selected from those in actual use, by the Engineer, in each and every calendar month, and their illuminating power shall be determined photometrically by The City Gas Inspector or the Engineer, at The City's Laboratory, or elsewhere, at the discretion of the Engineer. The average candle-power of the lamp so tested shall constitute the basis for calculating the light furnished by the lamps burning during the month and for which the charge is made. The term "Lamp" herein means the burner complete with mantle and chimney, if any, as found set up for use in any of the streets or public places, and the test herein referred to shall be made through uncolored clear glass of the same character as incloses the lamp on the street, and under the same conditions of supply of gas; the object of the test being to determine that the actual illuminating power, as contracted for, is given on the street, and to determine that each burner is consuming at least the required three cubic feet of gas per hour. Each lamp shall be tested with the gas furnished by the company furnishing gas to said lamp when in actual service on the street, the gas being first tested for candle-power. Twenty candle-power
9713 gas is herewith defined as gas which, when tested, at a distance of not less than one mile from the place of manufacture, on the improved form of Bunsen Photometer, by means of a Bray slit, Union No. 7 burner, consuming 5 cubic feet of gas per hour, shall give 20 candle-power; the testing candle shall be of sperm of six to the pound, and consuming, as near as possible, 120 grains of spermaceti per hour; and no test shall be recorded in which the candle consumes less than 114 or more than 126 grains of spermaceti per hour.

When desired by the Commissioner, these tests will be applied to each of the different classes of lamps, viz.:

Open flame gas.
Mantle gas.
Open flame naphtha.
Mantle naphtha.

The Contractor operating and maintaining the lamps tested shall replace said lamps whenever they are taken down for test, free of cost to The City, and shall always keep in stock ready for operation, at least 25 lamps of each class.

Lamps using other illuminant than gas will also be tested photometrically as to actual street illuminating power with the illuminating material they may contain when taken down, and they shall furnish the same illuminating power as a lamp of similar type using gas of 20-candle power supplied at the rate of three cubic feet per hour.

9714 The minimum candle power required of each type of lamp consuming not more than 3 cubic feet per hour per lamp, under the conditions herein specified, will be as follows:

Open flame gas.....12 candle power.
Mantle gas .....60 candle power.
Open flame naphtha .....12 candle power.
Mantle naphtha .....60 candle power.

The open flame lamps to be supplied with 20 candle power gas at the rate of not less than three cubic feet per hour. The mantle gas lamps to be supplied with at least 3 cubic feet of gas per hour, at 1½ inches pressure as may be required. The naphtha lamps, both open and mantle, shall be supplied with sufficient naphtha to equal the candle power of the similar type of gas lamp when supplied with gas under the specifications given above.

Burners.—5. All burners used for the illuminating material commonly called illuminating gas shall be of the capacity to burn at least three cubic feet of gas per hour in street lamps; and each of said burners shall burn at least three cubic feet of gas per hour at a pressure of 1½ inches as noted during all the time the lamps are required to be kept lighted, and they shall be kept in good order and repair, and renewed whenever required by the Engineer, and he shall also have same tested for consumption of gas when it is deemed necessary.

Should the illuminating material be naphtha, then the burners to be used for such illuminating material shall give a light (by photometric test) equal to the light given by the gas-burners in use in the public lamps of similar type in The City of New York. The

9715 burners are to be kept clear at all times, so as to allow a free and unobstructed flow of illuminating material, and to permit a full and normal flame. All checks or automatic regulators shall be of a type approved by the Engineer, and shall be cleaned at least once in each year, or oftener if ordered by the Engineer.

Change of burners.—6. The party of the first part shall have the right to require that burners of a greater consuming capacity than three cubic feet of gas per hour shall be furnished to the public gas-

lamps, or any portion of them, at any time during the aforesaid term of this contract, provided that the party of the first part will pay to the Contractor, for the lamps so furnished, an additional compensation, equivalent to the increase of the compensation allowed by the foregoing contract and proportioned only to the increased amount of gas consumed by each burner over and above three cubic feet per hour.

Sample lamps and burner tips.—7. Sample lamps, showing all burning appliances and connections for each type of mantle or other lamp to be furnished, shall be submitted when called for by the Commissioner to the Engineer for the purposes of comparison and test. Such sample lamps shall be complete in every respect, and shall accurately represent the burner which the Contractor uses on each type of lamp under this contract, and the sample lamp, like lamps in service, shall be so combined and adjusted as to secure, under all ordinary variations of pressure, an intensity of candle power of not less than sixty in the case of mantle lamps and twelve in the case of open flame lamps.

Change of burners and mantles.—8. Incandescent mantles for either gas or naphtha lamps when supplied for the lamps now using same, or for lamps which may be hereafter specified by the
9716 Commissioner, shall be of the very best quality, capable of producing and maintaining under the conditions of this contract not less than 60 candle power. Whenever the mantles become smoked or deteriorated to such an extent that at least 60 candle power is not obtained, they must be replaced by new mantles by the Contractor. The Commissioner reserves the right to have the lamps and the character of mantles furnished, tested, basing test on the same conditions as those under which they are required to burn on the streets, and to reject any lamps and mantles furnished that do not comply with the above requirements as to candle power. Anti-vibrators for lamps, using incandescent mantles, should be furnished with each lamp, and samples of same should be submitted to the Engineer for approval with the sample of lamp furnished him as mentioned elsewhere.

Street signs.—9. The Borough President or the Commissioner shall have the right at any time to place signs designating the names of the streets on any lamp or lamp-posts situated on the street corners of any street to be lighted under this contract without further expense to The City, whether the said lamp or lamp-posts shall belong to The City or not.

Such glass or other street signs as are at present in place upon the lanterns or lamp-posts shall be retained in their proper places and position.

All the lamps and street signs are to be kept in such a cleanly condition that not more than ten per cent. (10%) of the light of the lamps shall be absorbed or obstructed by the uncolored glass; and the lamps and street signs shall all be cleaned at least
9717 three times in each week, and oftener if the Commissioner shall direct or require the same; and in each of these cleanings, all the glass of the lanterns, as well as the glass of the street

signs, shall be thoroughly cleaned both on the inside and on the outside, and all dust and dirt shall be brushed from the frames.

Repairing and reglazing.—10. The lamps, including the bottoms, are to be repaired and reglazed within twenty-four hours after any portion of the same shall be broken, and all the work or material for either of said purposes is to be furnished by the Contractor, without cost to The City.

Stained glass of a ruby color of such tint and arranged in a manner approved of by the Commissioner shall be placed in the fire alarm signal lamps, and shall also be required in the tops of the glass lanterns nearest several fire alarm signal boxes and in the tops of the glass lanterns on the street corner nearest said boxes. And in case any of said stained glass should be broken after being placed in the lamps, then the Contractor shall replace the same, but in the Borough of Manhattan, where fire alarm lanterns on mantle lamps, the glass will be provided by The City and put in place by Contractor without further cost to The City.

Cocks, tubes and burners.—11. The cocks, tubes, tips, mantles, chimneys, globes, burners and checks which may become worn out or useless, or which, in the opinion of the Commissioner, are worn out or useless, shall be immediately replaced by the Contractor, at his own cost and expense.

Repairing lamp-posts. —12. Whenever the Commissioner shall require that any lamp-post or posts shall be reset or straight-
9718 ened, or that any column or columns be releaded or recalked, or that any lamp-post or posts be repaired in any other manner, in this contract specified, the same shall be done within twenty-four hours after the Department shall notify the Contractor of such requirement.

Painting.—13. The lamp-posts, lamp-irons, brackets and lanterns, used for gas or naphtha, are to have one heavy coat of best paint, ground in oil, as follows: The lamp-posts, cross-heads and stand-pipes of open-flame bracket lamps to have one coat of dark green paint, blue shade. The square lamp-irons, brackets, and outside of open-flame lanterns to have one coat of green paint, pea-green shade, the design being to make a strong contrast between lamp-posts and lanterns. The tin work on inside of lanterns to be painted in all their parts with one heavy coat of best white lead paint; the round lamp-irons and under side of the reflectors of the boulevard type of lamps to be painted with one coat of the best white lead paint, and so much of the stand pipes as project above the lamp-posts to be painted in the same manner as the lamp-posts.

The mantle gas or naphtha lanterns shall be painted in such a manner, and of such a color as shall be satisfactory to the Commissioner.

Fire-alarm lamp-posts and lanterns shall be painted as specified above, except as to color, which shall be of such color as the Commissioner may direct. This Contractor, however, is not to paint the telegraph boxes on the fire-alarm posts. All the material shall be of the best quality, and prepared so as to present a gloss finish. While painting the lanterns care must be taken that the glass shall
9719 not be daubed or smeared with paint. All the painting is to be completed by the first day of July next and the Commis-

sioner is to be notified when and where the painting is to be commenced. All new lamp-posts to be painted immediately upon erection.

Removing lamp-posts.—14. All lamp-posts shall be taken down which the Commissioner may require to be removed for any purpose.

New gas lamp-posts, service and stand pipes.—15. New gas lamp-posts are to be fitted up on any street, avenue, pier, park or public place, wherever the same may be required by the Commissioner. The butts and columns are to be placed in a strictly perpendicular position, the socket of the butt to be calked with yarn gasket and melted lead, the lead to be tamped and then trimmed even with rim of butt. The service pipe shall be one (1) inch wrought-iron pipe, which shall be properly connected to a one (1) inch wrought-iron stand-pipe, which shall be galvanized upon its outer surface. At the lower extremity of the stand-pipe the service pipe shall make an angle bend of easy curvature, so as to avoid any congestion of any material that may collect within the pipe, and thence have a direct fall to the main. The service pipe shall receive a heavy coat of asphaltic paint before there is any filling-in around it. The service pipe and bend on bottom of stand-pipe shall rest on solid earth to prevent the same from settling and forming a trap; the earth is to be thoroughly tamped about the butt as the same is thrown into the excavation. Bracket lamps are to be fitted up in lieu of lamp-posts, when required, the brackets and stand-pipes to be fastened to the wall in a firm and secure manner. The service pipes, stand-pipes and fittings
9720 are to be furnished and connected by the Contractor.

Lanterns.—16. All lanterns, cross-heads, lamp-irons, service pipes, stand-pipes and lamp-posts used for gas or for naphtha lamps, which, in the opinion of the Commissioner, may become so worn out, broken or useless as to be unfit to be repaired, are to be removed and other lanterns, cross-heads, lamp-irons, service pipes, stand-pipes and lamp-posts substituted in lieu thereof (and globe lamps substituted for square lamps) by the Contractor as noted in the proposals.

Cartages.—17. All supplies, which under this agreement, may be required to be furnished by the party of the first part, will be so furnished, but the cartage thereof shall be done by the Contractor.

Extension of lines.—18. Subject to the provisions of section 469 of The Greater New York Charter, the Contractor will, upon being required so to do by the party of the first part, extend its pipes or conductors, erect new lamps in and along any or all the streets, avenues and public places within the limits aforesaid or adjacent thereto, and will relight the gas lamps situated on the lines of the mains of the Contractor, which are now suspended or may hereafter be suspended, when ordered so to do by the Commissioner.

Illuminant to be used.—19. The Commissioner may determine and designate in any locality, after the estimates are opened, what illuminating material shall be used in the public lamps, or any number of them, in such locality, during the period above mentioned; also upon such determination to decline any estimate or part thereof

for lighting such locality with illuminating material other than so determined upon.

9721 Gas to public building meters.—20. In supplying gas to public buildings under the jurisdiction and control of the Department of Water Supply, Gas and Electricity, the Contractor shall supply, put in place and connect the service pipes from the gas mains to the building and install a proper meter for registering the gas consumed. The service pipes shall be extended through any court yards, alleys, open spaces, squares, etc., to the point where the meter is situated, without extra charge to The City; and the gas company shall protect their services when required by inclosing same in proper casing, to prevent condensation, when so ordered by this Department.

The gas supplied shall be of twenty (20) candle power and not less than one and one-half inch pressure at meter end of the house service pipe.

The Department may regulate the pressure inside the building by means of a gas-pressure regulator if it so desires.

No meter shall be installed, changed or replaced in any public building, except in case of emergency, unless due notice shall be given the Bureau of Lamps and Gas twenty-four (24) hours before such new meter is installed or change is made, so that the Inspector of such bureau can be present to check the reading of the meter. All new meters installed shall be installed reading at zero, except when permission is given otherwise. When meters are changed on account of an emergency, the Bureau of Lamps and Gas shall be notified as soon as possible thereafter.

The location of any meter or meters in public buildings shall be finally decided by the Bureau of Lamps and Gas, so as to

9722 avoid, as far as possible, the placing of same in such a position that it is almost impossible for an ordinary man to read the meter without great difficulty.

Meters should be of size satisfactory to the Department of Water Supply, Gas and Electricity, and should be equipped with a key for the purpose of turning on and off the gas.

When more than one meter is installed in a building, each meter should be labelled to show the portion of the building supplied through it.

Meters and tips.—21. All gas meters used for supply of gas to public buildings or public places in The City of New York may be tested by the Engineer whenever the Commissioner may so order, and the Contractor shall replace same during test, if necessary, free of charge. If meter be found defective, same shall also be repaired or replaced by the Contractor without further charge to The City.

Tips for open flame gas burners used in public buildings shall be supplied by the Contractor furnishing illuminating material, and such tips and other burning appliances shall be approved of by the Engineer before being installed and the Contractor shall not furnish such tips or burning appliances to lamps in any public building without first obtaining such approval.

The Engineer may test or have tested such tips or burning appli-

ances whenever he deems it advisable in order to determine their consumption of illuminant. These tips shall not consume more than six cubic feet of gas per hour, unless otherwise especially ordered; and in case they shall consume over this amount, new ones may be ordered put in their place by the Contractor without further
9723 expense to The City during the term of this contract.

Meter readings.—22. In order that bills, when rendered to The City by the Contractor, shall agree so far as it is possible, with the meter readings as obtained by the City Inspectors, it will be required that on proper notification from The City, the Inspectors of the company will read the various meters on the same day as they are read by The City's Inspectors.

Extension of system.—23. If the requirements of The City, under this contract, include any lamps with which the pipes or conductors of the Contractor were not connected at the time of the making, such estimate or bid, thirty days from the date of the execution of this agreement, and such further time, not exceeding thirty days, as may be deemed reasonable by the Commissioner, will be allowed the Contractor in which to supply and connect service pipes, bends, reducers and stand-pipes, as specified above, to such lamps and all such connections, material and labor shall be furnished by the Contractor without other expense to The City; provided that the Contractor has or shall procure a consent, grant or franchise from the proper municipal or other authority, authorizing the laying of gas-mains or conductors in the streets or parts of streets and public places in which the said lamps are located; and that no openings shall be made in the pavements for the purpose of such connections prior to the first day of March, 1905, nor until permits shall have been obtained from the Commissioner, authorizing such openings.

Payments postponed.—24. No payment on account of any such lamps will be made to the contractor for the time so allowed,
9724 nor until the same shall have been connected with the mains or conductors of the Contractor, nor will payment be made on account of supply of gas or other illuminating material at any lamp except for the time during which all the requirements herein mentioned shall have been fully performed in accordance with the specifications.

Patent rights.—25. The Contractor shall indemnify and save The City harmless from any and all claims and suits for damages by reason of any infringement of patent rights in the use under this contract of any illuminating material or any burning appliances connected therewith, or for repairs or supplies to lamps or lamp-posts.

Time or period of lighting.—26. The Contractor shall have the right to lay, subject to the provisions of the laws now in force, pipes or conductors at any time between March 1 and December 31 during the term of this contract, upon giving forty-eight hours' written notice to the Department, and subject to the approval of the Commissioner, of its intention to break up or open any street, avenue, or public place, or part thereof, or to remove any part of the pavement thereof, for the purpose of laying, subject to the provisions of statute,

or repairing the pipes or conductors, to conduct the said gas or other illuminating material. And the Contractor shall, whenever it shall break up or open any street, avenue, or public place, replace the earth which may be removed in so doing, before sunset of the day on which such opening shall be made (the earth to be thoroughly tamped as the same is thrown into the trench or excavation), and replace the pavement, and repave and repair the same, in such reasonable time and manner as the Borough President may direct, and in as
9725 good and firm a manner as such street, avenue, or public place, or part thereof, was in before being broken up for the purpose aforesaid, and shall, from time to time, as required by the Borough President, readjust and fill and finish the same as long as, in the opinion of the Borough President, may be necessary on account of the settling of the earth or pavement caused by the opening. Also, all such repairs as shall at any time become necessary to said pavement by reason of laying the said pipes or conductors, shall be made and done by the Contractor, at his own cost and expense. And the Contractor shall furnish to the Commissioner a report weekly, stating therein the location of each and every opening made in the pavements during the preceding week. And no street, avenue, or public place, or part thereof, shall or will be broken up or opened, or the pavement thereof removed, or be again filled up or repaired, except under the direction and supervision of a competent person, to be appointed by the Commissioner; but the party of the first part shall not be called upon to pay any sum, to any party or parties, for the inspection of any pavement which may have been removed and repaved by the Contractor, but the expense of such inspection shall be paid by the Contractor when required by the Commissioner. The Contractor shall and will so conduct the manufacture and manufactories of gas, or stations for other illuminating material, as not to create a nuisance, and it will in all things be governed by such reasonable rules and regulations as the Borough President may from time to time establish or direct, relative to the opening of such streets, avenues, or public places, or parties thereof, and laying down
9726 the pipes and conductors, and for lighting, cleaning and protecting the lamps and street signs aforesaid.

Map of lighting district.—27. In order that the Commissioner and his assistants may determine whether the gas lamps are lighted and extinguished in accordance with the time-table hereinbefore mentioned, the Contractor shall furnish to the Commissioner a map or maps showing the lamps in the district of each lamplighter, and designating the particular lamp at which each lighter commences to light, and also the lamp at which he completes the lighting; and in extinguishing the lamps the lamplighter shall begin and finish at the same lamps as are designated for beginning and finishing the lighting; and the Contractor shall notify the Commissioner of any change which may be made in the beginning and finishing points on any lamp district during the term of this contract. The Contractor shall furnish to the Commissioner a report daily, stating therein the number and location of all new lamps fitted up and lighted, of lamp-posts removed and reset, and of lamps

discontinued during the preceding week. Nothing herein contained shall be construed or deemed as granting to the Contractor any sole or exclusive right or privilege, or as preventing the party of the first part from granting the like privileges as are hereby given to the Contractor, to any other company, persons or parties whatsoever, or as preventing any person or persons, residing in or adjacent, or near to any of the said streets, avenues, or public places, or parts thereof, from erecting, in or upon his or their own premises, any building or apparatus, to light with gas or other illuminant his or their own house, store, manufactory or premises.

(Here follows time table, marked p. 9727.)

TIME TABLE

For Lighting and Extinguishing the Public Gas and Naphtha Lamps for the Year 1905.

Begin to Light at Time Given Below and Complete Lighting in One Hour.		Begin to Extinguish at Time Given Below and Finish in Fifty (50) Minutes.		
Jan. 15	4.35 P. M.	Jan. 16	6.30 A. M.	
" 22	4.45 "	" 23	6.20 "	
Feb. 5	4.55 "	Feb. 6	6.05 "	
" 12	5.05 "	" 13	5.55 "	
				31 nights, 413 hours and 5 minutes.
Feb. 15	5.10 P. M.	Feb. 16	5.55 A. M.	
" 26	5.25 "	" 27	5.30 "	
Mar. 11	5.40 "	Mar. 12	5.25 "	
				28 nights, 339 hours and 40 minutes.
Mar. 15	5.45 P. M.	Mar. 16	5.10 A. M.	
" 19	5.45 "	" 20	5.05 "	
" 23	5.55 "	" 27	4.55 "	
Apr. 1	6.05 "	Apr. 2	4.40 "	
" 9	6.15 "	" 10	4.30 "	
				31 nights, 331 hours.
Apr. 15	6.25 P. M.	Apr. 16	4.10 A. M.	
" 24	6.40 "	" 25	3.55 "	
May 7	6.55 "	May 8	3.40 "	
				30 nights, 273 hours.
May 15	7.05 P. M.	May 16	3.30 A. M.	
" 21	7.10 "	" 22	3.20 "	
June 4	7.15 "	June 5	3.10 "	
				31 nights, 246 hours and 45 minutes.
June 15	7.20 P. M.	June 16	3.10 A. M.	
July 14	7.20 "	July 15	3.10 "	
				30 nights, 230 hours.
July 15	7.20 P. M.	July 16	3.20 A. M.	
" 30	7.10 "	" 31	3.35 "	
Aug. 6	7.05 "	Aug. 7	3.45 "	
" 13	7.00 "	" 14	3.50 "	
				31 nights, 252 hours and 5 minutes
Aug. 15	6.55 P. M.	Aug. 16	4.00 A. M.	
" 27	6.40 "	" 28	4.10 "	
Sept. 3	6.20 "	Sept. 4	4.10 "	
" 10	6.05 "	" 11	4.10 "	
				31 nights, 289 hours and 35 minutes.
Sept. 15	6.00 P. M.	Sept. 16	4.25 A. M.	
" 17	5.55 "	" 18	4.25 "	
" 24	5.40 "	" 25	4.35 "	
Oct. 1	5.20 "	Oct. 2	4.45 "	
" 8	5.20 "	" 9	4.50 "	
				30 nights, 326 hours and 10 minutes.
Oct. 15	5.05 P. M.	Oct. 16	5.00 A. M.	
" 22	4.50 "	" 23	5.10 "	
" 29	4.40 "	" 30	5.15 "	
Nov. 5	4.25 "	Nov. 6	5.25 "	
" 12	4.15 "	" 13	5.35 "	
				31 nights, 383 hours and 40 minutes.
Nov. 15	4.15 P. M.	Nov. 16	5.45 A. M.	
" 25	4.00 "	" 26	5.50 "	
Dec. 14	4.00 "	Dec. 15	6.10 "	
				30 nights, 407 hours.
Dec. 15	3.55 P. M.	Dec. 16	6.10 A. M.	
" 24	4.05 "	" 25	6.10 "	
Jan. 14	4.15 "	Jan. 15	6.25 "	
				31 nights, 433 hours.

Total, 365 nights, or 3,925 hours.

DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY,
NEW YORK, March 4, 1905.

The above table will show the time for lighting and extinguishing the public lamps during the year 1905. See specifications, paragraph 1.

JOHN T. OAKLEY,
Commissioner of Water Supply, Gas and Electricity.

March 16 to December 31, 1905, inclusive, 2,966 hours and 5 minutes.

9727

9728 CITY'S EXHIBIT 64.

BEFORE THE STATE BOARD OF TAX COMMISSIONERS.

In the Matter of the Assessment for Taxation of the Special Franchises of the CONSOLIDATED GAS COMPANY OF NEW YORK.

Assessment of 1905.

Complaint.

The CONSOLIDATED GAS COMPANY OF NEW YORK complains of the assessment and valuation for taxation of its special franchises, such assessment and valuation of said franchises as fixed and determined by the State Board of Tax Commissioners being $30,500,000.

Your complainant alleges that the said assessment is erroneous, unequal and illegal in the following respects:

First. Said assessment largely exceeds the value of complainant's special franchises. The value of complainant's special franchises in the City of New York does not exceed the sum of $4,261,156.00. The extent of the said over-valuation is, therefore, $26,238,844.00. The rights, permissions and franchises of the complainant to occupy the streets in the City of New York exist under certain laws specified in the complainant's report to the State Board for the year ending June 30, 1899, and complainant has acquired no new or different rights, permissions or franchises since the filing of said report. The assessments of complainant's special franchises in previous years were: $13,950,000 in 1900; $13,990,000 in 1901; $16,275,-
9729 000 in 1902; $17,985,000 in 1903, and $21,900,000 in 1904; although there has been no variation in the value of complainant's special franchises during said years, and the same are not more valuable at the present time than they were in the year 1900.

Second. There is no method or evidence by which the value of the intangible right to lay and maintain mains and pipes in the streets can be determined. There exists no market or demand for such rights, permission and franchises. The price at which complainant's franchises or rights would sell, under ordinary circumstances, is merely nominal. The municipal authorities of the City of New York have never fixed any amount as the consideration for granting such a franchise, and the right to lay mains and pipes in the streets has always been procurable from said municipal authorities without the payment of any monetary consideration therefor. The number of such franchises which may exist at any one time has never been limited by said municipal authorities. The value of the said right to occupy the streets does not exceed the cost of procuring such a right from the City, and that cost is nominal.

Third. Three other gas companies operate and maintain systems of mains and pipes in the streets of the Borough of Manhattan, in

the City of New York, namely, the Standard Gas Light Company of the City of New York, the New Amsterdam Gas Company, and the New York Mutual Gas Company. Each of these companies possesses a franchise or right to lay and maintain pipes and mains in all the streets of the said Borough of Manhattan. The franchise of each of the said companies is coextensive with that of the franchise of the complainant. The assessment of the State Board of Tax Commissioners upon the special franchises of each of the said companies in Manhattan Borough, for the year 1905, is as follows:

9730	Standard Gas Light Company	$4,840,000
	New Amsterdam Gas Company	6,590,000
	New York Mutual Gas Company.....	4,058,000

Fourth. Complainant's special franchise is, therefore, assessed approximately $25,000,000 higher than any identical franchise of any other gas company in the Borough of Manhattan, of said City of New York.

Fifth. The actual number of cubic feet of space occupied by the mains and pipes of this complainant, in the streets, avenues and public places of the City of New York, is 3,051,210. The assessment of $30,500,000 upon the special franchises of this complainant, including complainant's tangible property in the streets, is, therefore, an assessment of $9.668 for each cubic foot of space occupied. If the value of the tangible property in the streets ($4,261,156) is deducted from the amount of the assessment, the assessment alone is $8.599 for each cubic foot of space occupied by the mains and pipes of the complainant in the streets of said City. The tax based upon this assessment, at the rate of taxation in the Borough of Manhattan in the year 1904, would amount to fourteen and one-half cents (14½ cts.) for each cubic foot of space occupied.

Sixth. On information and belief, on October 9, 1902, the City of New York granted to the Pennsylvania, New York and Long Island Railroad Company a franchise to construct tunnels for the operation of railways under 31st, 32d and 33d Streets, in the Borough of Manhattan, from the North River to the East River. The compensation fixed by the municipal authorities for the right, franchise and license of said railroad company under, on or above the said streets is fifty cents (50 cts.) for each lineal foot of single track constructed by said company in, under, on or above
9731 the said streets, excluding 31st and 33d Streets between Seventh and Ninth Avenues. The compensation fixed as aforesaid for the right, franchise and license in, under, on or above 31st and 33d Streets, between Seventh and Ninth Avenues, is $14,000 per annum. At the said rates of compensation the annual payment to the City of New York will be, as computed upon the plans and specifications for the said tunnels, at the rate of $.00129 per cubic foot of actual space used under the streets for a double track tunnel.

Seventh. The tax based and levied upon the present assessment of the special franchises of this complainant will, therefore, be more than one hundred (100) times as great as the annual compensation

fixed by the City of New York itself for the valuable tunnel privileges and franchises under streets of the Borough of Manhattan of the said City, although the franchises and rights of the complainant to lay and maintain gas pipes and mains under the streets and avenues of said City are of very much less value than the said tunnel franchises and rights possessed by the said Pennsylvania, New York and Long Island Railroad aforesaid.

Eighth. The mains and pipes of complainant underlie 3,910,571 square feet of the surface of the streets, avenues and public places of the Borough of Manhattan of said City. The assessment of $30,500,000 upon the special franchises of this complainant, including its tangible property in the streets, is, therefore, an assessment of $7.79 for each square foot of street surface which the mains and pipes of complainant underlie. If the value of the complainant's tangible property in the streets is deducted from the amount
9732 of the present assessment, the assessment upon the intangible element of complainant's special franchises alone is $6.70 for each square foot of street surface which the mains and pipes of the complainant underlie. The complainant possesses no rights, privileges or franchises upon the surface of the streets of the said City, and this assessment for subsurface rights is grossly excessive.

Ninth. Upon information and belief: All of the street railway companies in Manhattan Borough, having underground trolley systems, have rights for the use of the streets similar to those of complainant, and far more valuable, and yet these street railway special franchises have been valued this year, and for several years last past, at proportionately far less than the special franchises of this complainant. On information and belief, that the assessment of the special franchises of the street railway companies in Manhattan Borough does not exceed $9.00 for each cubic foot of space in the streets occupied by the tracks, conduits and other appurtenances of said companies, as compared with the assessment of $9.66 per cubic foot of space occupied by the mains and pipes of complainant. The special franchises of the street railway companies include the right to use and occupy the surface of the streets, which is a right much more valuable than the exclusively subsurface rights of complainant The street railway companies also possess the right to occupy the middle and most desirable and most valuable portions of the streets, while the complainant is compelled by the municipal authorities to lay its pipes near the curb line and in the least desirable portion of the street.

Tenth. All telegraph, telephone and electric companies,
9733 and all companies in Manhattan Borough having rights for the use of the streets similar to those of the complainant, and far more valuable, have been valued by the State Board for this, and for several years last past, at proportionately far less than said valuation of the complainant's said franchises.

Eleventh. The net earnings of complainant from operation, as shown by its report for the year ending June 30, 1904, were $5,039,669.49, being an increase over the earnings of previous year of $111,270—or an increase of 2.25 per cent. The special franchise

assessment for 1905, $30,500,000, is an increase over that of 1904, $21,900,000, of $8,600,000, or an increase of 39.27 per cent. The rate of increase in the assessment is, therefore, 17.45 times as great as the rate of increase in earnings. The tax upon the increase of the special franchise assessment, at the prevailing rate of taxation in New York City, will be $137,600, which is greater than the increase in the net earnings of complainant, $111,270; in other words, the increased tax upon the special franchise, based upon the present assessment, will exhaust the increased net earnings. The large increase in the present assessment, therefor, effects a confiscation of the entire amount of the increased earnings of the complainant, and notwithstanding the greater volume of business transacted and the greater profit realized therefrom during the last year, the profits of the complainant, after the payment of taxes, will be less than during the previous year.

Twelfth. Complainant further alleges that said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land, real estate and real property in the City of New York, and especially in the Borough of
9734 Manhattan, in said City, and of other land, real estate and real property in the State of New York outside of said City, and your complainant specifies all the land, real estate and real property in the City of New York and each and every parcel thereof upon the assessment rolls of said City as instances in which such inequality exists, and of the extent thereof; that the said assessment is 25 per cent. higher than the assessment of all other land, real estate and real property in the City of New York on the same roll, made by the Department of Taxes and Assessments of said City. Complainant further shows said assessment and valuation is unequal in that it is far greater than the assessments placed on similar real property in said New York City by said State Board, and complainant cites as instances of said inequality each and every assessment upon special franchises in said New York City, as fixed by said State Board.

Thirteenth. Complainant further alleges that said assessment is illegal and erroneous, not only by reason of the overvaluations and inequalities hereinbefore stated, but also for the reason that Chapter 712 of the Laws of 1899, as amended, under which this Board assumed to and did make such assessment and valuation is unconstitutional and void and confers no power or authority upon this Board to make said assessment or valuation.

Fourteenth. Complainant further alleges that such assessment is illegal and erroneous in that Chapter 712 of the Laws of 1899, under which Act said State Board assumed to and did make this assessment and valuation is unconstitutional and void, in that it violates Article 10, Section 2, of the Constitution of the State of New York; that it attempts to confer jurisdiction, powers and functions
9735 upon the State Board of Tax Commissioners which under the Constitution can only be exercised by local assessors selected by the locality in which the tax is sought to be collected.

Fifteenth. Complainant further alleges that said assessment and

valuation is illegal and erroneous in that said Board has included therein, not only the value of all franchises, rights, authority and permission to construct, maintain and operate in, under, above, upon or through the streets, highways and public places of the City of New York, the mains, pipes, etc., of the complainant, with their appurtenances for conducting gas, but has also included therein the franchises of said company to make and sell gas. These franchises are all valuable ones, but under Chapter 712 of the Laws of 1899 cannot be included in the assessment and valuation of special franchises.

Sixteenth. Complainant further alleges that said assessment is illegal in that the same is in violation of those provisions of the Constitution of the State of New York and the Constitution of the United States which prohibit the taking of property without the due process of law, for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, which said State Board claims confers upon it the right, power and authority to act in the premises, and to fix and determine the valuation of said rights, permissions and franchises, did not or do not prescribe any definite rule, method or principle of valuation of such rights, permissions and franchises, and is so vague and indefinite that it cannot be administered by the taxing officer or enforced by the courts, and said State Board in fixing and determining the valuation of such rights, permissions and franchises, did not follow or
9736 apply any rule, method or principle of valuation, but fixed said assessment arbitrarily and without evidence of the value of said rights, permissions and franchises.

Seventeenth. Complainant further alleges that said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, is in conflict with and in violation of those provisions of the Constitution of the United States, which provide that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Eighteenth. Complainant further alleges that said assessment and valuation is illegal and erroneous in that this Board has omitted to assess and value separately the tangible and intangible property constituting said special franchises.

Nineteenth. Complainant further alleges that said assessment and valuation is illegal and erroneous in that said Board has failed therein to separately fix and determine the valuation of each special franchise of the complainant or to state which special franchise or special franchises of the complainant are included in its assessment.

Twentieth. Complainant further alleges that by reason of said unequal, erroneous and illegal assessment and valuation, it will sustain injury and damage.

CONSOLIDATED GAS COMPANY,
By R. A. CARTER, *Secretary.*

9737 STATE OF NEW YORK,
County of New York, ss:

Robert A. Carter, being duly sworn, deposes and says, that he is Secretary of the Consolidated Gas Company of New York, the complainant above named; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

Deponent has been continuously engaged in the gas business since the year 1877, having been employed by the Consolidated Gas Company and one of its predecessor corporations in various capacities from that of junior clerk to that of general accountant; and deponent has also been for several years connected with the Consolidated Gas Company in an official capacity, having served that company as comptroller and as secretary. Deponent is thoroughly familiar with the gas business in the City of New York, and especially in the Borough of Manhattan, in said City. Deponent knows the extent and nature of the special franchises possessed by the Consolidated Gas Company, and by all the other gas companies operating and doing business in the Borough of Manhattan, and is familiar with the business and operations of all said companies. Deponent has made a careful and thorough study of all details of the gas business, and is familiar with the intrinsic and relative values of the special franchises possessed by the different gas companies in the Borough of Manhattan, in said City.

R. A. CARTER.

Sworn to before me this 20th day of March, 1905.
FREDERICK N. GILBERT,
Notary Public, Kings County.

Certificate filed in New York County.

9738 CITY'S EXHIBIT 65.

BEFORE THE STATE BOARD OF TAX COMMISSIONERS.

In the Matter of the Assessment for Taxation of the Special Franchises of the CONSOLIDATED GAS COMPANY OF NEW YORK.

Assessment of 1906.

Complaint.

The CONSOLIDATED GAS COMPANY OF NEW YORK complains of the assessment and valuation for taxation of its special franchises, such assessment and valuation of said franchises, as fixed and determined by the State Board of Tax Commissioners being $31,900,000.

Your complainant alleges that the said assessment is erroneous, unequal and illegal in the following respects:

First. Said assessment largely exceeds the value of complainant's special franchises. The true value of complainant's special franchises in the City of New York and the amount for which the same would sell under ordinary circumstances does not exceed the sum of $14,000,000. The extent of the said overvaluation is $17,900,000. The rights, permissions and franchises of the complainant to occupy the streets in the City of New York exist under certain laws specified in the complainant's report to the State Board for the year ending June 30, 1899, and complainant has acquired no new or
9739 different rights, permissions or franchises since the filing of said report. The assessments of complainant's special franchises in previous years were: $13,950,000 in 1900; $13,990,000 in 1901; $16,275,000 in 1902; $17,985,000 in 1903; $21,900,000 in 1904, and $27,300,000 in 1905; although there has been no variation in the value of complainant's special franchises during said years, except in the slight increase from year to year of the amount of tangible property in the streets, and the intangible rights are not more valuable at the present time than they were in the year 1900.

Second. Three other gas companies operate and maintain systems of mains and pipes in the streets of the Borough of Manhattan, in the City of New York, namely, the Standard Gas Light Company in the City of New York, the New Amsterdam Gas Company, and New York Mutual Gas Company. Each of these companies possess a franchise or right to lay and maintain pipes and mains in all the streets of the said Borough of Manhattan. The franchise of each of the said companies is coextensive with that of the franchise of the complainant. The assessment of the State Board of Tax Commissioners upon the special franchises of each of said companies in Manhattan Borough, for the year 1906, is as follows:

Standard Gas Light Company	$4,793,000
New Amsterdam Gas Company	6,175,000
New York Mutual Gas Company	4,075,000

Third. Complainant's special franchise is, therefore, assessed approximately $26,000,000 higher than any identical franchise of any other gas company in the Borough of Manhattan, of said City of New York.

Fourth. The actual number of cubic feet of space occupied
9740 by the mains and pipes of this complainant, in the streets, avenues and public places of the City of New York, is 3,086,870. The assessment of $31,900,000 upon the special franchises of this complainant, including complainant's tangible property in the streets, is, therefore, an assessment of $10.33 for each cubic foot of space occupied. The tax based upon this assessment, at the rate of taxation in the Borough of Manhattan, in the year 1905, would amount to fifteen and two-fifths cents (15 2-5 cts.) for each cubic foot of space occupied.

Fifth. On information and belief, on October 9, 1902, the City of New York granted to the Pennsylvania, New York and Long Island Railroad Company a franchise to construct tunnels for the operation of railways under 31st, 32d and 33d Streets, in the Borough of Man-

hattan, from the North River to the East River. The compensation fixed by the municipal authorities for the rights, franchises and license of said railroad company under, on or above the said streets is fifty cents (50 cents) for each lineal foot of single track constructed by said company in, under, on or above the said streets, excluding 31st and 33d Streets between Seventh and Ninth Avenues. The compensation fixed as aforesaid for the right, franchise and license in, under, on or above 31st and 33d Streets, between Seventh and Ninth Avenues, is $14,000 per annum. At the said rates of compensation the annual payment to the City of New York will be, as computed upon the plans and specifications for the said tunnels, at the rate of $.00129 per cubic foot of actual space used under the streets for a double track tunnel.

Sixth. The tax based and levied upon the present assessment of the special franchises of this complainant will, therefore, be
9741 about one hundred and twenty (120) times as great as the annual compensation fixed by the City of New York itself for the valuable tunnel privileges and franchises under streets of the Borough of Manhattan of the said City, although the franchises and rights of the complainant to lay and maintain gas pipes and mains under the streets and avenues of said City are of very much less value than the said tunnel franchises and rights possessed by the said Pennsylvania, New York and Long Island Railroad aforesaid.

Seventh. The mains and pipes of complainant underlie 3,975,636 square feet of the surface of the streets, avenues and public places of the Borough of Manhattan, of said City. The assessment of $31,900,000 upon the special franchises of this complainant, including its tangible property in the streets, is, therefore, an assessment of over $8 for each square foot of street surface which the mains and pipes of complainant underlie. The complainant possesses no rights, privileges or franchises upon the surface of the streets of the said City, and this assessment for exclusively subsurface rights is grossly excessive.

Eighth. Upon information and belief: All of the street railway companies in Manhattan Borough, having underground trolley systems, have rights for the use of the streets similar to those of complainant, and far more valuable, and yet these street railway special franchises have been valued this year, and for several years last past, at proportionately far less than the special franchises of this complainant. On information and belief, that the assessment of the special franchises of all street railway companies in Manhattan Borough does not exceed $6.00 for each cubic foot of space in the streets
9742 occupied by the tracks, conduits and other appurtenances of said companies, as compared with the assessment of $10.33 per cubic foot of space occupied by the mains and pipes of complainant. The special franchises of the street railway companies include the right to use and occupy the surface of the streets, which is a right much more valuable than the exclusively subsurface rights of complainant. The street railway companies also possess the right to occupy the middle and most desirable and most valuable portions of the streets, while the complainant is compelled by the municipal

authorities to lay its pipes near the curb line and in the least desirable portion of the street.

Ninth. All telegraph, telephone and electric companies, and all companies in Manhattan Borough having rights for the use of the street similar to those of the complainant, and far more valuable, have been valued by the State Board for this, and for several years last past, at proportionately far less than said valuation of the complainant's said franchises.

Tenth. The net earnings of complainant from operation, as shown by its report for the year ending June 30, 1905, were $4,953,051.21, being less than the net earnings from operation of the previous year by the amount of $86,618.28. The special franchise assessment for 1906 ($31,900,000) is an increase over that of 1905 ($27,300,000) of $4,600,000, or an increase of nearly 17%, notwithstanding the decrease in the net earnings from operations.

Eleventh. Complainant further alleges that said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land, real estate and real prop-
9743 erty in the City of New York and complainant specifies the assessment of all the land, real estate and real property in the City of New York, especially in the Borough of Manhattan, and of each and every parcel thereof upon the assessment rolls of said City as instances in which such inequality exists, and of the extent thereof. That the said State Board in making the aforesaid assessment of complainant's special franchises, has fixed and determined as the value thereof a sum in excess of the full and true value of said special franchises. Upon information and belief that in the City of New York other real property is not assessed at its full value; but the assessment of all other land, real estate and real property in said City by the Department of Taxes and Assessments for the year 1906, is made at a valuation equal to about seventy-five per centum of the full and true value of the land, real estate and real property so assessed. That the said assessment of complainant's special franchises is therefore to the extent of at least twenty-five per centum thereof unequal, disproportionate and erroneous. Complainant further shows said assessment and valuation is unequal in that it is made at a higher proportionate valuation than the assessments placed on similar real property in said New York City by said State Board, and complainant cites as instances of said inequality each and every assessment upon special franchises in said New York City, as fixed by said State Board.

Twelfth. Complainant further alleges that said assessment is illegal and void in that the same is in conflict with and violates those provisions of the Constitution of the United States and of the Constitution of the State of New York which prohibit the taking of property without due process of law, for the reason that the said State Board in fixing the amount of the aforesaid assessment upon
9744 which taxes will be levied and collected from complainant upon its special franchises did not follow or apply any rule, method or principle of valuation and did not determine and ascertain the value of said special franchises, but fixed the aforesaid

amount arbitrarily as the basis upon which said special franchises should be taxed without reference to their value, and that the said assessment is the result of mere guesswork and conjecture on the part of said State Board of Tax Commissioners.

Thirteenth. Complainant further alleges that said assessment is illegal and void in that said State Board has not only included in said assessment the value of all franchises, rights, auhoritty, and permission to construct, maintain or operate mains, and pipes in, under, above, upon or through the streets, highways and public places of the City of New York, and the value of the mains and pipes of complainant with their appurtenances for conducting gas; but has also included therein the value of the franchise of complainant to make and sell gas, the value of the good will of the business of complainant and the value of complainant's contracts with its patrons, over none of which the said State Board has jurisdiction.

Fourteenth. Complainant further alleges that said assessment is illegal in that Chapter 712 of the Laws of 1899, as amended, under which the said State Board assumed to and did make said assessment and valuation, is unconstitutional and void in that it violates Article 10, Section 2 of the Constitution of the State of New York, that it attempts to confer jurisdiction, powers and functions upon the State Board of Tax Commissioners which under the Constitution of the State of New York can be exercised only by local assessors
9745 selected by the locality in which the tax is sought to be collected.

Complainant further shows that by reason of the aforesaid overvaluation, inequality and illegality in the aforesaid assessment it is aggrieved and will be injured.

CONSOLIDATED GAS COMPANY,
By R. A. CARTER, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

Robert A. Carter, being duly sworn, deposes and says, that he is Secretary of the Consolidated Gas Company of New York, the complainant above named; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

Deponent has been continuously engaged in the gas business since the year 1877, having been employed by the Consolidated Gas Company and one of its predecessor corporations in various capacities from that of junior clerk to that of general accountant; and deponent has also been for several years connected with the Consolidated Gas Company in an official capacity, having served that company as comptroller and as secretary. Deponent is thoroughly familiar with the gas business in the City of New York, and especially in the Borough of Manhattan, in said City. Deponent knows the extent and nature of the special franchises possessed by
9746 the Consolidated Gas Company, and by all the other gas companies operating and doing business in the Borough of Manhattan, and is familiar with the business and operations of all

said companies. Deponent has made a careful and thorough study of all details of the gas business, and is familiar with the intrinsic and relative values of the special franchises possessed by the different gas companies in the Borough of Manhattan, in said City.

R. A. CARTER.

Sworn to before me, this 26th day of March, 1906.

HENRY W. CLARK,
Notary Public, New York County.

9747 CITY'S EXHIBIT 66.

In the Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONSOLIDATED GAS COMPANY OF NEW YORK
against
STATE BOARD OF TAX COMMISSIONERS.

To the Supreme Court of the State of New York:

The petition of the Consolidated Gas Company of New York respectfully shows to the Court:

That the petitioner is a corporation, duly incorporated and existing under the laws of the State of New York, having been formed and organized in 1884 by the consolidation of the following named companies or corporations under Chapter 367 of the Laws of 1884: New York Gas Light Company, Manhattan Gas Light Company, Metropolitan Gas Light Company, Municipal Gas Light Company, Knickerbocker Gas Light Company and Harlem Gas Light Company, and located and doing business as such, and having its principal place of business in the Borough of Manhattan, in the City of New York.

That on October 1, 1899, it was and still is the owner of certain mains and pipes laid or placed in certain streets, highways,
9748 or public places of the City of New York together with franchises, rights, permissions and consents to construct, maintain or operate in the streets, highways and public places of the City of New York mains and pipes for conducting gas; each of said franchises, rights, permissions and consents with the said tangible property in connection therewith being denominated in the Tax Law of this State as a Special Franchise.

That since January 1, 1902, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns have constituted, and still constitute, the State Board of Tax Commissioners.

Your petitioner further shows that the rights, permissions and franchises so owned and possessed by your petitioner were granted to and acquired by your petitioner or its grantors under and pursuant to contracts with the State and City of New York, and upon conditions and stipulations in reference thereto, which exempt the said rights, permissions and franchises from taxation upon assess-

ments made by said State Board or by any other Board or Officers under the statute hereinafter mentioned, namely, Chapter 712 of the Laws of 1899 and all the amendments thereto.

Your petitioner further shows that, pursuant to Section 43 of the Tax Law of the State, and within thirty days after the said section took effect, it made a written report to said State Board of Tax Commissioners as to each of said Special Franchises owned by it as aforesaid, and as to all matters required by said section to be reported to said State Board, and has, in the manner required by law, made all reports and supplemental reports required by law or by said State Board to be made to it.

9749 Your petitioner further shows that it also reported to said State Board all statutes of the State, general or special, all resolutions of the Common Council of the City of New York relating to said several Special Franchises, and all provisions of law which by said statutes and resolutions made conditions to the acceptance of said Special Franchises and were agreed to by your petitioner and have always been fully performed.

Your petitioner further shows that in said reports and supplemental reports made as aforesaid your petitioner duly reported to said State Board that the tangible property included in Special Franchises consisted of pipes and mains laid under said streets, highways and public places and the value thereof, based upon the cost of reproducing the same, as required by said State Board.

Your petitioner further shows that said State Board, claiming to act pursuant to the Tax Law of this State, and claiming and alleging that the said Special Franchises owned by your petitioner as aforesaid were subject to assessment in the City of New York, proceeded to fix and determine the valuation thereof, and, as your petitioner is informed and believes, did, on or about the 28th day of January, 1903, fix and determine the valuation of said Special Franchises to be the sum of eighteen million three hundred and eighty-five thousand dollars ($18,385,000), and did thereupon make the assessment of said Special Franchises at the sum aforesaid.

Your petitioner further shows that immediately after making said assessment, said State Board gave to your petitioner a notice in writing, stating in substance that such assessment had been made and that the total valuation of said Special Franchises was eighteen million three hundred and eight'-five thousand dollars

9750 ($18,385,000), and that the said State Board would meet at its office in the City of Albany on the 18th day of February, 1903, at 11.30 A. M., to hear and determine any complaint concerning such assessment. That pursuant to such notice, and at the time and place therein stated, your petitioner attended before said State Board. That your petitioner, upon said hearing, requested to be informed by said State Board as to the amount which said State Board had determined to be the valuation of the tangible property of your petitioner, constructed in, upon, under or above the streets, included in the assessment of said Special Franchises, and as to the amount fixed and determined by said State Board to be the valuation of the rights, permissions and franchises to

construct, maintain and use such pipes under said streets, highways and public places, as aforesaid, but that said State Board refused to give your petitioner such information, and also refused to state, or to inform your petitioner as to the rule or method adopted and applied in ascertaining and determining the said valuation. That your petitioner thereupon complained of said assessment and filed with said State Board a written statement under oath, specifying the grounds of its complaint, a copy of which statement is hereto annexed marked "A," and is a part of this petition.

Your petitioner further shows that thereafter and on or about the 3d day of March, 1903, the said State Board, still claiming to act pursuant to the Tax Law of the State, and still claiming that the said pipes of your petitioner and the rights, permissions and franchises to construct, maintain and use the same were subject to assessment in the City of New York, finally determined the valu-
9751 ation of said Special Franchises to be the sum of seventeen million nine hundred and eighty-five thousand dollars ($17,985,000), and on or about March 3d, 1903, filed with the Department of Taxes and Assessments in the City of New York, a written statement of such valuation as finally fixed and determined by said State Board and duly verified by the Secretary thereof, and at or about the same time gave notice in writing to your petitioner that such written statement had been filed with the Clerk of the City of New York.

Your petitioner further shows that by the provisions of the Greater New York Charter, the Commissioners of Taxes and Assessments of the City of New York constitute the Board of Taxes and Assessments for said City and also are the Department of Taxes and Assessments in the City of New York, and were required by law beginning with the first day of April in each year to prepare assessment rolls for the several parts of said City, containing valuations of real and personal property and to certify and deliver said assessment rolls to the Municipal Assembly of said City on the first Monday of July in each year. That said Commissioners of Taxes and Assessments since the first day of April, 1903, prepared the assessment roll of said real and personal property of the several parts of said City for the year 1903 and entered thereon before the final review or certification of such rolls by them, the valuation of said Special Franchises of your petitioner as so fixed by the said State Board as aforesaid, and having annexed thereto their certificate that the said rolls were correct and in accordance with the entries in the several books of record in the said department, duly verified the same and delivered the said assessment rolls to the Municipal Assembly of said
9752 City, as required by law, on the first Monday of July, 1903.

Your petitioner further shows upon information and belief, that the said State Board in making the assessment aforesaid of said Special Franchises, fixed and determined the value thereof at a sum in excess of the full and entire value thereof.

Your petitioner further shows that the Tax Law of the State defines, declares and makes a Special Franchise for the purpose of

assessment and taxation, as and to be land, real estate and real property.

Your petitioner further shows that in the City of New York no land, real estate or real property is assessed at its full value, but that all land, real estate and real property in said City, as elsewhere in the State, is assessed at a valuation equal to about seventy-five per cent. of its full value. That it is the official duty of the said State Board to investigate and examine the methods of assessment through the State and to furnish to local assessors information to aid them in making assessment of real and personal property, and said State Board and each of its members well knew in making the assessment of said Special Franchises as aforesaid, that land, real estate and real property within the State, and especially within the City of New York, was assessed at less than its full value, and notwithstanding such knowledge, and well knowing that to assess the said Special Franchises of your petitioner at their full value would be to assess them at a higher proportionate valuation than other land, real estate and real property in said City, they made the assessment aforesaid.

Your petitioner further shows that, claiming to be aggrieved by said assessment and alleging that it will be injured thereby, it specifies:

9753 *First.* That said assessment is illegal in that the same is in violation of those provisions of the Constitution of the United States which prohibit the taking of property without the due process of law, for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, which said State Board claims confers upon it the right, power and authority to act in the premises, and to fix and determine the valuation of said rights, permissions and franchises, did not or do not prescribe any definite rule, method or principle of valuation of such rights, permissions and franchises, and is so vague and indefinite that it cannot be administered by the taxing officers or enforced by the courts, and said State Board in fixing and determining the valuation of such rights, permissions and franchises did not follow or apply any rule, method or principle of valuation, and by such reason thereof complainant has not been given such a hearing before said State Board as it is entitled to under the Constitution of the United States, and is void.

Second. That said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, is in conflict with and in violation of those provisions of the Constitution of the United States, which provide that no State shall deny to any person within its jurisdiction the equal protection of the laws, and is void.

Third. That said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, impairs the obligations

9754 of the contracts by which said Special Franchises were acquired and are now held by your petitioner, and is therefore

in conflict with and in violation of those provisions of the Constitution of the United States, which provide that no State shall pass any law impairing the obligations of a contract.

Fourth. That said assessment is further illegal in that said State Board refused to inform your petitioner as to the valuation fixed and determined by it of the tangible property included in said Special Franchises, or as to the rule or method adopted and applied by said State Board in fixing and determining the valuation of the rights, permissions and franchises to construct, maintain and use said pipes under said streets, highways and public places as aforesaid, and that by such refusal your petitioner was deprived of such a hearing as it was entitled to by the Constitutions of the State and of the United States, before a final assessment could be made against it, and is void.

Fifth. That said assessment is erroneous by reason of overvaluation, and the extent of such overvaluation is thirteen million nine hundred and seventy-two thousand seven hundred and forty-three dollars ($13,972,743).

Sixth. That said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land, real estate and real property in the City of New York, and of other land, real estate and real property in the State of New York outside of said City, and your petitioner specifies all the land, real estate and real property in the City of New York and each and every parcel thereof upon the assessment rolls of said City as instances in which such inequality exists, and of the extent thereof; that the said
9755 assessment is 25 per cent. higher than the assessment of all other land, real estate and real property in the City of New York on the same roll, made by the same officers, to wit, by the State Board of Tax Commissioners or by the Department of Taxes and Assessments of said City, and your petitioner will be injured thereby. That your petitioner will give testimony of such inequality upon the hearing of this proceeding.

Seventh. That said State Board of Tax Commissioners in making the assessment and valuation of your petitioner's special franchises proceeded upon no legal or equitable basis, rule, theory or principle, but, on the contrary, said assessment and valuation is the result of mere guesswork on the part of said State Board of Tax Commissioners.

Eighth. That said State Board of Tax Commissioners has, in making the assessment of the special franchises of your petitioner, failed to assess and value separately each special franchise of your petitioner and to state which special franchise or special franchises are included in said assessment and valuation, and has failed in said assessment and valuation to separately fix and determine the valuation of each special franchise which your petitioner derived from its other constituent companies named in said report, as it is required to do under Chapter 712 of the Laws of 1899.

Ninth. That said State Board of Tax Commissioners has included in said assessment and valuation not only the value of all franchises, rights and authority or permission to construct, maintain or operate in, under, above, upon or through the streets, highways and public

places of the City of New York, the mains, pipes, etc., of
9756 your petitioner, with their appurtenances, for conducting gas, but has also included therein the franchise of your petitioner to make and sell gas. This franchise is a valuable one, but under Chapter 712 of the Laws of 1899 cannot be included in the assessment and valuation of special franchises.

Your petitioner further shows that fifteen days have not elapsed since the final completion and filing of the assessment roll in said City of New York. That no previous application has been made for a writ herein.

Wherefore, your petitioner prays that a writ of *certiorari* may be allowed and issue out of this Court, directed to the said State Board of Tax Commissioners, commanding them to certify to this Court:

1. All and singular the proceedings herein referred to and had by the said State Board of Tax Commissioners relating to said valuation and assessment, with the dates thereof respectively, together with that part of the record relating to the same.

2. All and singular the papers submitted to your petitioner and filed with the said State Board of Tax Commissioners.

3. Any other evidence or information, if any, before said State Board of Tax Commissioners or considered by it in arriving at the decision aforesaid, and if there was no such evidence or information, a statement to that effect.

4. A concise statement of such other facts as may be pertinent and material to show the value of the property assessed and the grounds of the valuation made by you.

5. Any and all documents, records and papers, if any such there be, not embraced in the above specifications relating to and
9757 concerning the valuation and assessment aforesaid, and a statement of any other matters material to the determination of the application of said petitioner, to the end that the said determination and proceedings of the said State Board of Tax Commissioners in the premises may be reviewed and corrected as shall be in accordance with the law and facts in this matter, and, further, that your petitioner may have herein such other and further relief as to this Court may seem to be just.

Dated, New York, July 15, 1903.

CONSOLIDATED GAS COMPANY OF NEW YORK,

(Signed) By R. A. CARTER, *Secretary.*

Boardman, Platt & Soley, Attorneys for Petitioner, 35 Wall Street, New York City.

9758 CITY AND COUNTY OF NEW YORK, *ss:*

R. E. Carter, being duly sworn, says: That he is the Secretary of the Consolidated Gas Company of New York, the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the

reason why such petition is not verified by the petitioner is that the petitioner is a corporation. That deponent derives his knowledge of the facts herein set forth from the employees, agents and officers of the said petitioner and from information acquired by him in the performance of his duties.

(Signed) R. A. CARTER.

Sworn to before me this 15th day of July, 1903.

[SEAL.] (Signed) WALLACE YOUNG,
Notary Public, New York County.

9759 "A."

Before the State Board of Tax Commissioners.

In the Matter of the Assessment and Valuation for Taxation of the Special Franchises of the CONSOLIDATED GAS COMPANY OF NEW YORK.

Complaint.

The Consolidated Gas Company of New York complains of the assessment and valuation for taxation of its special franchises, such assessment and valuation of said franchises as so fixed and determined being $18,385,000.

Your complainant alleges that said assessment and valuations are erroneous, unequal and illegal in the following respects:

First. Said assessment and valuation largely exceeds the value of said special franchises.

Second. Said assessment and valuation is erroneous and unequal in that the same has been made at a higher proportionate valuation than the assessment of other real estate on the tax rolls of the City of New York, Borough of Manhattan, for the same year. Real estate in the Borough of Manhattan is largely and almost universally assessed at an amount not in excess of 75 per cent. of its full
9760 value, while the special franchises of your complainant are assessed and valued by this Board at an amount greatly in excess of their actual value.

Third. Said complainant further alleges that said assessment is illegal and erroneous, not only by reason of the overvaluations and inequalities hereinbefore stated, but also for the reason that Chapter 712 of the Laws of 1899, as amended, under which this Board assumed to and did make such assessment and valuation is unconstitutional and void and confers no power or authority upon this Board to make said assessment or valuation.

Fourth. This complainant further alleges that said assessment and valuation is also illegal and erroneous in that this Board has omitted to assess and value separately the tangible and intangible property constituting said special franchises.

Fifth. This complainant further alleges that said assessment and valuation is illegal and erroneous in that said Board has failed therein

to fix and determine the valuation of each special franchise of the complainant or to state which special franchise or special franchises of the complainant are included in its assessment.

Sixth. This complainant further alleges that said assessment is illegal and erroneous in that said Board has failed therein to separately fix and determine the valuation of the special franchises which the Consolidated Gas Company derived from the Harlem Gas Light Company.

Seventh. This complainant further alleges that said assessment is illegal and erroneous in that said Board has failed to separately fix and determine the valuation of the special franchises which the Consolidated Gas Company derived from the Metropolitan Gas Light Company.

Eighth. This complainant further alleges that said assess-
9761 ment and valuation is illegal and erroneous in that said Board has included therein, not only the value of all franchises, rights, authority and permission to construct, maintain and operate in, under, above, upon or through the streets, highways, and public places of the City of New York, the mains, pipes, etc., of the complainant, with their appurtenances for conducting gas, but has also included therein the franchises of said company to make and sell gas.

Ninth. This complainant further alleges that said assessment and valuation is illegal and erroneous in that said Board has included therein the value of the franchises to make and sell gas which said Consolidated Gas Company derived from the Harlem Gas Light Company, and from the Metropolitan Gas Light Company.

Tenth. This complainant further alleges that, by reason of said unequal, erroneous and illegal assessment and valuation, it will sustain injury and damage.

CONSOLIDATED GAS COMPANY OF NEW YORK,
By R. A. CARTER, *Secretary.*

9762 CITY AND COUNTY OF NEW YORK:

R. A. Carter, being duly sworn, says that he is the Secretary of the Consolidated Gas Company of New York; that he has read the foregoing complaint, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief.

That the reason this verification is made by deponent is because the complainant is a domestic corporation of the State of New York, and that deponent is the secretary of said corporation.

R. A. CARTER.

Sworn to before me this 16th day of February, 1903.

[SEAL.] WALLACE YOUNG,
Notary Public, Nassau County.

Certificate filed in New York County.

9763 CITY'S EXHIBIT 67.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONSOLIDATED GAS COMPANY OF NEW YORK
against
GEORGE E. PRIEST, LESTER F. STEARNS and WILLIAM HALPIN, Composing and Constituting THE STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF NEW YORK.

1904 Assessment.

To the Supreme Court of the State of New York:

The petition of the Consolidated Gas Company of New York respectfully shows to the Court:

That the petitioner is a corporation, duly incorporated and existing under the laws of the State of New York, having been formed and organized in 1884 by the consolidation of the following named corporations under Chapter 367 of the Laws of 1884: The New York Gas Light Company, Manhattan Gas Light Company, Metropolitan Gas Light Company of the City of New York, Municipal Gas Light Company of New York, Knickerbocker Gas Light Company
9764 and Harlem Gas Light Company, and located and doing business as such, and having its principal place of business in the City of New York.

That on October 1, 1899, it was and still is the owner of certain mains and pipes laid or placed in certain streets, highways or public places of the City of New York together with franchises, rights, permissions and consents to construct, maintain or operate in the streets, highways and public places of the City of New York mains and pipes for conducting gas; each of said franchises, rights, permissions and consents with the said tangible property in connection therewith being denominated in the Tax Law of this State as a Special Franchise.

That from January 1, 1902, and until the 18th day of March, 1904, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns constituted the State Board of Tax Commissioners; upon said 18th day of March, 1904, William Halpin was appointed a member of said Board in the place and stead of said J. Edgar Leaycraft, and since said date the said George E. Priest, Lester F. Stearns and William Halpin have constituted and still constitute said State Board of Tax Commissioners.

Your petitioner further shows that the rights, permissions and franchises so owned and possessed by your petitioner were granted to and acquired by your petitioner or its grantors under and pursuant to contracts with the State and City of New York, and upon conditions and stipulations in reference thereto, which exempt the said rights, permissions and franchises from taxation upon assessments made by the said State Board or by any other Board or officers under

the statute hereinafter mentioned, namely, Chapter 712 of the Laws of 1899 and all the amendments thereto.

9765 Your petitioner further shows that, pursuant to Section 43 of the Tax Law of the State, and within thirty days after the said section took effect, it made a written report to said State Board of Tax Commissioners as to each of said Special Franchises owned by it as aforesaid, and as to all matters required by said section to be reported to said State Board, and has, in the manner required by law, made all reports and supplemental reports required by law or by said State Board to be made to it.

Your petitioner further shows that it also reported to said State Board all statutes of the State, general or special, all resolutions of the Common Council of the City of New York relating to said several Special Franchises, and all provisions of law which by said statute and resolutions made conditions to the acceptance of said Special Franchises and were agreed to by your petitioner and have always been fully performed.

Your petitioner further shows that in said reports and supplemental reports made as aforesaid your petitioner duly reported to said State Board that the tangible property included in its special franchises consisted of pipes and mains laid under said streets, highways and public places and the value thereof, based upon the cost of reproducing the same, as required by said State Board.

Your petitioner further shows that said State Board, claiming to act pursuant to the Tax Law of this State, and claiming and alleging that the said special franchises owned by your petitioner as aforesaid were subject to assessment in the City of New York, proceeded to fix and determine the valuation thereof, and, as your petitioner is informed and believes, did, on or about the 17th day of Febru-

9766 ary, 1904, fix and determine the valuation of said special franchises to be the sum of twenty-two million two hundred thousand dollars ($22,200,000), and did thereupon make the assessment of said special franchises at the sum aforesaid.

Your petitioner further shows that immediately after making said assessment, said State Board gave to your petitioner a notice in writing, stating, in substance, that such assessment had been made and that the total valuation of said special franchises was twenty-two million two hundred thousand dollars ($22,200,000), and that the said State Board would meet at its office in the City of Albany on the 8th day of March, 1904, at 12 o'clock M., to hear and determine any complaint concerning such assessment. That pursuant to such notice, and at the time and place therein stated, your petitioner attended before said State Board and complained of said assessment and filed with said State Board a written statement under oath, specifying the grounds of its complaint, a copy of which statement is hereto annexed marked "A," and is made a part of this petition.

Your petitioner further shows that thereafter and on or about the 21st day of March, 1904, the said State Board, still claiming to act pursuant to the Tax Law of the State, and still claiming that the said pipes of your petitioner and the rights, permissions and franchises to construct, maintain and use the same were subject to as-

sessment in the City of New York, finally determined the valuation of said special franchise to be the sum of twenty-one million nine hundred thousand dollars ($21,900,000), and on or about March 21st, 1904, filed with the Department of Taxes and Assess-
9767 ments in the City of New York, a written statement of such valuation as finally fixed and determined by said State Board and duly verified by the Secretary thereof, and at or about the same time gave notice in writing to your petitioner that such written statement had been filed with the Clerk of the City of New York.

Your petitioner further shows that by the provisions of the Greater New York Charter, the Commissioners of Taxes and Assessments of the City of New York constitute the Board of Taxes and Assessments for said city and also are the Department of Taxes and Assessments in the City of New York, and were required by law beginning with the first day of April in each year to prepare assessment rolls for the several parts of said city, containing valuations of real and personal property and to certify and deliver said assessment rolls to the Municipal Assembly of said city on the first Monday of July in each year, or if said first Monday of July shall fall on a legal holiday, then to certify and deliver said assessment rolls to said Municipal Assembly on the next succeeding day thereafter. That said Commissioners of Taxes and Assessments since the first day of April, 1904, prepared the assessment rolls of said real and personal property of the several parts of said city for the year 1904, and entered thereon before the final revision or certification of such rolls by them, the valuation of said special franchises of your petitioner as so fixed by the said State Board as aforesaid, and having annexed thereto their certificate that the said rolls were correct and in accordance with the entries in the several books of record in the said departments, duly verified the same and delivered the said assessment rolls to the Municipal Assembly of said city, as required by law, on the next succeeding day after
9768 the first Monday of July, 1904, the first Monday of July, 1904, falling upon a legal holiday.

Your petitioner further shows upon information and belief, that the said State Board in making the assessment aforesaid of said special franchises, fixed and determined the value thereof at a sum in excess of the full and entire value thereof.

Your petitioner further shows that the Tax Law of the State defines, declares and makes a special franchise for the purpose of assessment and taxation, as and to be land, real estate and real property.

Your petitioner further shows that in the City of New York no land, real estate or real property is assessed at its full value, but that all land, real estate and real property in said city, as elsewhere in the State, is assessed at a valuation equal to about seventy-five per cent. of its full value. That it is the official duty of the said State Board to investigate and examine the methods of assessment throughout the State and to furnish to local assessors information to aid them in making assessments of real and personal property, and said State Board and each of its members well knew in making the assessment of said special franchises as aforesaid, that land, real estate

and real property within the State, and especially within the City of New York, was assessed at less than its full value, and notwithstanding such knowledge, and well knowing that to assess the said special franchises of your petitioner at their full value would be to assess them at a higher proportionate valuation than other land, real estate and real property in said city, they made the assessment aforesaid.

Your petitioner further shows that, claiming to be aggrieved by said assessment and alleging that it will be injured thereby, it specifies:

9769 *First.* That said assessment is illegal in that the same is in violation of those provisions of the Constitution of the United States and of the Constitution of the State of New York which prohibit the taking of property without due process of law, for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, which said State Board claims confers upon it the right, power and authority to act in the premises, and to fix and determine the valuation of said rights, permissions and franchises, did not and does not prescribe any definite rule, method or principle of valuation of such rights, permissions and franchises, and is so vague and indefinite that it cannot be administered by the taxing officers or enforced by the courts, and said State Board in fixing and determining the valuation of such rights, permissions and franchises did not follow or apply any rule, method or principle of valuation, and by reason thereof, complainant has not been given such a hearing before said State Board as it is entitled to under the Constitution of the United States and under the Constitution of the State of New York, and is void.

Second. That said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, is in conflict with and in violation of those provisions of the Constitution of the United States, which provide that no State shall deny to any person within its jurisdiction the equal protection of the Laws, and is void.

Third. That said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all

9770 amendments thereto, under which said State Board assumed to and did make said assessment and valuation, impairs the obligations of the contracts by which said special franchises were acquired and are now held by your petitioner, and is therefore in conflict with and in violation of those provisions of the Constitution of the United States and the Constitution of the State of New York, which provide that no law shall be passed impairing the obligations of a contract.

Fourth. That said assessment is illegal in that Chapter 712 of the Laws of 1899, as amended under which the said State Board assumed to and did make said assessment and valuation, is unconstitutional and void in that it violates Article 10, Section 2 of the Constitution of the State of New York; that it attempts to confer jurisdiction, powers and functions upon the State Board of Tax Commissioners which under the Constitution of the State of New York can

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be exercised only by local assessors selected by the locality in which the tax is sought to be collected.

Fifth. That said assessment is further illegal and erroneous in that said State Board has omitted and failed to assess and value separately the tangible and intangible property constituting said Special Franchises.

Sixth. That said assessment is erroneous by reason of over-valuation, and the extent of such over-valuation is seventeen million eight hundred twenty-nine thousand one hundred and sixty dollars ($17,829,160).

Seventh. That said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land, real estate and real property in the City of New York, and of other land, real estate and real property in the State of New
9771 York outside of said City, and your petitioner specifies all the land, real estate and real property in the City of New York and each and every parcel thereof upon the assessment rolls of said City as instances in which such inequality exists, and of the extent thereof; that the said assessment is 25 per cent. higher than the assessment of all other land, real estate and real property in the City of New York on the same roll, made by the same officers, to wit, by the State Board of Tax Commissioners or by the Department of Taxes and Assessments of said City, and your petitioner will be injured thereby. That your petitioner will give testimony of such inequality upon the hearing of this proceeding.

Eighth. That said State Board of Tax Commissioners in making the assessment and valuation of your petitioner's special franchises proceeded upon no legal or equitable basis, rule theory or principle, but, on the contrary, said assessment and valuation is the result of mere guesswork on the part of said State Board of Tax Commissioners.

Ninth. That said State Board of Tax Commissioners has, in making the assessment of the special franchises of your petitioner failed to assess and value separately each special franchise of your petitioner and to state which special franchise or special franchises are included in said assessment and valuation, and has failed in said assessment and valuation to fix and determine separately the valuation of each special franchise which your petitioner derived from its several constituent companies named in its report to said State Board, as said State Board is required to do under Chapter 712 of the Laws of 1899.

Tenth. That said State Board of Tax Commissioners has
9772 included in said assessment and valuation not only the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon or through the streets, highways and public places of the City of New York and of the mains, pipes, etc., of your petitioner, with ther appurtenances, for conducting gas, but has also included therein the value of the franchise of your petitioner to make and sell gas. This franchise is a valuable one, but under Chapter 712 of the Laws of 1899 cannot be included in the asesment and valuation of speial franchises.

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Eleventh. That said State Board of Tax Commissioners has also erroneously included in said assessment and valuation the value of the good will of the business of your petitioner and the value of your petitioner's contracts with its patrons.

Your petitioner further shows that fifteen days have not elapsed since the final completion and filing of the assessment roll in said City of New York. No previous application has been made for a writ herein.

Wherefore, your petitioner prays that a writ of *certiorari* may be allowed and issued out of this Court, directed to the said George E. Priest, Lester F. Stearns and William Halpin, constituting the State Board of Tax Commissioners, commanding them to certify to this Court:

1. All and singular the proceedings herein referred to and had by the said State Board of Tax Commissioners relating to said valuation and assessment, with the dates thereof respectively, together with that part of the record relating to the same.

9773 2. All and singular the papers submitted by your petitioner and filed with the said State Board of Tax Commissioners.

3. All other evidence or information, if any, before said State Board of Tax Commissioners or considered by it in arriving at the decision aforesaid, and if there was no such evidence or information, a statement to that effect.

4. A concise statement of such other facts as may be pertinent and material to show the value of the property assessed and the grounds of the valuation made by said State Board.

5. Any and all documents, records and papers, if any such there be, not embraced in the above specifications relating to and concerning the valuation and assessment aforesaid, and a statement of any other matters material to the determination of the application of said petitioner.

To the end that the said determination and proceedings of the said State Board of Tax Commissioners in the premises may be reviewed and corrected as shall be in accordance with the law and facts in this matter, and, further, that your petitioner may have herein such other and further relief as to this Court may seem to be just.

Dated New York, July 18, 1904.

CONSOLIDATED GAS CO. OF NEW YORK,
By R. A. CARTER, *Secretary.*

BOARDMAN, PLATT & SOLEY,
Attorneys for Petitioner, 35 Wall Street, New York City..

9774 CITY AND COUNTY OF NEW YORK, *ss:*

R. A. Carter, being duly sworn, says: That he is the Secretary of the Consolidated Gas Co. of New York, the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as

to those matters he believes it to be true. That the reason why said petition is not verified by the petitioner is that the petitioner is a corporation. That deponent derives his knowledge of the facts herein set forth from the employees, agents and officers of the said petitioner and from information acquired by him in the performance if his duties.

R. A. CARTER.

Sworn to before me this 18th day of July, 1904.

[SEAL.] WALLACE YOUNG,
Notary Public, No. 5, Kings County.

Certificate filed in New York County.

9775 "A."

Before the State Board of Tax Commissioners.

In the Matter of the Assessment and Valuation for Taxation of the Special Franchises of THE CONSOLIDATED GAS COMPANY OF NEW YORK.

Complaint.

The Consolidated Gas Company of New York complains of the assessment and valuation for taxation of its special franchises, such assessment and valuation of said franchises as so fixed and determined being $22,200,000.

Your complainant alleges that said assessment and valuation are erroneous, unequal and illegal in the following respects:

First. Said assessment and valuation largely exceeds the value of said special franchises. The extent of said overvaluation is $18,129,160. The valuation which has been so placed upon the special franchises of the complainant and the tangible property connected therewith is far in excess of the value which the State Board has placed this year and for several years on similar rights and property of other persons and corporations. All of the street railroad companies in Manhattan Borough having underground trolley systems have rights for the use of streets similar to those of the com-
9776 plainant, and far more valuable, and yet these have all been valued by the State Board for this and for several years last past at proportionately far less than said valuation of the complainant's said rights. All telegraph, telephone and electric companies and all companies in Manhattan Borough having rights for the use of the streets similar to those of the complainant, and far more valuable, have been valued by the State Board for this and for several years last past at proportionately far less than said valuation of the complainant's said rights.

Second. Complainant further alleges that said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land, real estate and real property in the City of New York, and of other land, real estate and real property in the State of New York outside of said city, and your complainant specifies all the land, real estate and real property in the City of New York and each and every parcel thereof upon the assessment rolls

of said city as instances in which such inequality exists, and of the extent thereof; that the said assessment is 25 per cent. higher than the assessment of all other land, real estate and real property in the City of New York on the same roll, made by the Department of Taxes and Assessments of said city. Complainant further shows said assessment and valuation is unequal in that it is far greater than the assessments placed on similar real property in said New York City by said State Board, and complainant cites as instances of said inequality each and every assessment upon special franchises in said New York City, as fixed by said State Board.

Third. Complainant further alleges that said assessment is
9777 illegal and erroneous, not only by reason of the overvaluations and inequalities hereinbefore stated, but also for the reason that Chapter 712 of the Laws of 1899, as amended, under which this Board assumed to and did make such assessment and valuation is unconstitutional and void and confers no power or authority upon this Board to make said assessment or valuation.

Fourth. Complainant further alleges that such assessment is illegal and erroneous in that Chapter 712 of the Laws of 1899, under which act said State Board assumed to and did make this assessment and valuation is unconstitutional and void, in that it violates Article 10, Section 2, of the Constitution of the State of New York; that it attempts to confer jurisdiction, powers and functions upon the State Board of Tax Commissioners which under the Constitution can only be exercised by local assessors selected by the locality in which the tax is sought to be collected.

Fifth. Complainant further alleges that said assessment and valuation is illegal and erroneous in that said Board has included therein, not only the value of all franchises, rights, authority and permission to construct, maintain and operate in, under, above, upon or through the streets, highways and public places of the City of New York, the mains, pipes, etc., of the complainant, with their appurtenances for conducting gas, but has also included therein the franchises of said company to make and sell gas. These franchises are all valuable ones, but under Chapter 712 of the Laws of 1899 cannot be included in the assessment and valuation of special franchises.

Sixth. Complainant further alleges that said assessment is illegal in that the same is in violation of those provisions of the Constitution of the State of New York and the Constitution of the
9778 United States which prohibit the taking of property without the due process of law, for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, which said State Board claims confers upon it the right, power and authority to act in the premises, and to fix and determine the valuation of said rights, permissions and franchises, did not or do not prescribe any definite rule, method or principle of valuation of such rights, permissions and franchises, and is so vague and indefinite that it cannot be administered by the taxing officers or enforced by the courts, and said State Board in fixing and determining the valuation of such rights, permissions and franchises, did not follow or apply any rule, method or principle of valuation.

MAPS

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Seventh. Complainant further alleges that said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, is in conflict with and in violation of those provisions of the Constitution of the United States, which provide that no State shall deny to any person within its jurisdiction the equal protection of the laws, and is void.

Eighth. Complainant further alleges that said assessment is further illegal for the reason that said statute, viz., Chapter 712 of the Laws of 1899, and all amendments thereto, under which said State Board assumed to and did make said assessment and valuation, impairs the obligations of the contracts by which said special franchises were acquired and are now held by your petitioner and violates contracts with the State of New York and with the City of New York under which complainant is operating, and is, therefore, in
9779 conflict with and in violation of those provisions of the Constitution of the State of New York and the Constitution of the United States, which provide that no law shall be passed impairing the obligations of a contract.

Ninth. Complainant further alleges that said assessment and valuation is illegal and erroneous in that this Board has omitted to assess and value separately the tangible and intangible property constituting said special franchises.

Tenth. Complainant further alleges that said assessment and valuation is illegal and erroneous in that said Board has failed therein to separately fix and determine the valuation of each special franchise of the complainant or to state which special franchise or special franchises of the complainant are included in its assessment.

Eleventh. Complainant further alleges that by reason of said unequal, erroneous and illegal assessment and valuation, it will sustain injury and damage.

CONSOLIDATED GAS CO. OF NEW YORK,
By R. A. CARTER, *Secretary.*

9780 CITY AND COUNTY OF NEW YORK, *ss:*

R. A. Carter, being duly sworn, says: That he is the Secretary of the Consolidated Gas Company of New York; that he has read the foregoing complaint, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief. That the reason this verification is made by deponent is because the complainant is a domestic corporation of the State of New York, and that deponent is the Secretary of said corporation.

R. A. CARTER.

Sworn to before me this 7th day of March, 1904.

WALLACE YOUNG,
Notary Public, Nassau County.

Certificate filed in New York County.

(Here follow maps marked pages 9781 & 9782.)

(NOTE.—Pp. 9783 to 10561 incl., taken from their numerical position here and arranged in chronological order in front of the record, per stipulation.)

10562 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing (Appendix) pages, numbered from 10326 to 10561 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Consolidated Gas Company, Complainant, Appellee, against Julius M. Mayer, as Attorney General, Defendants-Appellants, as the same remain of record and on file in my office, and inserted in this transcript as an Appendix by consent of respective counsel.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 15th day of May, in the year of our Lord One Thousand Nine Hundred and eight and of the Independence of the said United States the One Hundred and thirty-second.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. —— —— *vs.* —— ——. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 21,176. S. New York C. C. U. S. Term No. 396. William R. Willcox *et al.*, constituting The Public Service Commission of the State of New York for the First District, appellants, *vs.* Consolidated Gas Company of New York. File No. 21,177. Term No. 397. The City of New York, appellant, *vs.* Consolidated Gas Company of New York. File No. 21,178. Term No. 398. William S. Jackson, as Attorney General of the State of New York, appellant, *vs.* Consolidated Gas Company of New York. Filed May 16th, 1908. File Nos. 21,176, 21,177, and 21,178.

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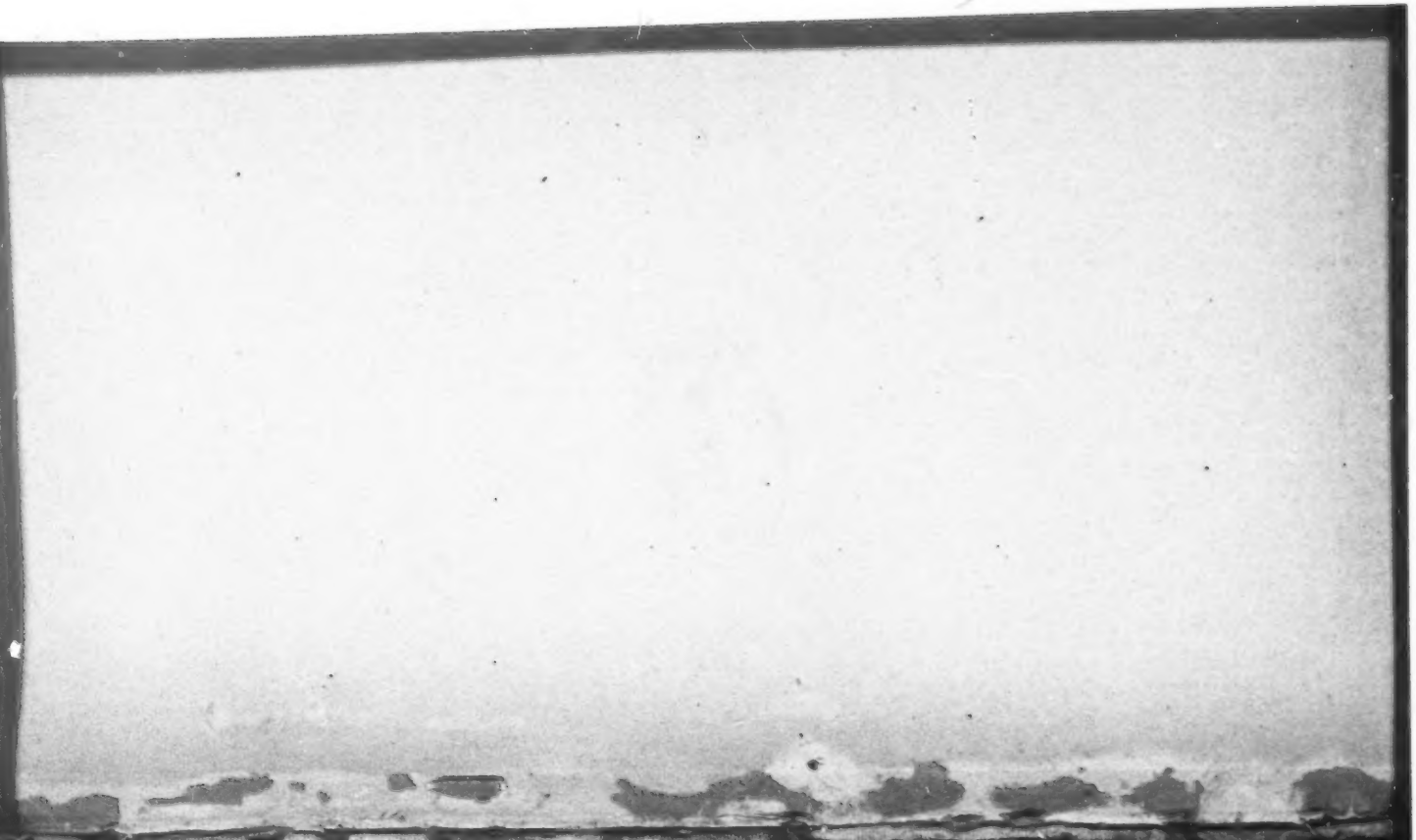

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

65533

Office Supreme Court, U. S.
FILED.
MAY 18 1908
JAMES H. McKENNEY,
CLERK

WILLIAM R. WILLCOX, *et al.*, constituting the Public Service Commission of the State of New York for the First District,
Appellants,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK,

No. 396

THE CITY OF NEW YORK,
Appellant,

vs.

SAME.

No. 397

MOTION TO ADVANCE.

B. H. TYRRELL, PRINTER, 206-208 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1907.

WILLIAM R. WILLCOX *et al.*, constituting the Public Service Commission of the State of New York for the First District, Appellants, *against* CONSOLIDATED GAS COMPANY OF NEW YORK.	No. 773.
THE CITY OF NEW YORK, Appellant, *vs.* Same	No. 774.

APPEALS FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Motion to Advance.

The appellants above named respectfully move to advance this cause, and to set the same for

argument at the earliest date convenient to the court.

The matter involved, briefly stated, is as follows: By a statute of 1905 the State of New York reduced the price of gas supplied to the City of New York by the gas companies therein from 90 to 75 cents per thousand cubic feet. By a statute of 1906 it reduced the price of gas sold to private consumers in said city from $1 to 80 cents per thousand cubic feet. By the final decree in this cause the defendant Jackson (who also appeals), the Attorney General of the State, and another are enjoined from enforcing said statute of 1906 by actions for penalties or otherwise. The appellants Willcox *et al,* constituting the Public Service Commission, are enjoined from applying for a mandamus or injunction to compel compliance with said statute. The appellant The City of New York is enjoined from enforcing by penalty or otherwise said statute of 1905. The finding of the Circuit Court upon which said decree is mainly based is that said statutes are void as taking property without due process of law, because the net income obtainable by this appellee under said statutes, as estimated by the court, is but little above 5% upon the present value of its property as so estimated.

No private consumer of gas is a party or privy to this suit; but the expense of litigating the question involved is so great that it is not within the power of any private consumer so to do. This suit was commenced May 1, 1906, and since that date nearly all of the private consumers have paid the dollar rate for their gas. Up to the entry of the final decree herein, this appellee deposited with the Clerk of the Court, for the pro-

tection of said private consumers, the sum of $4,823,485.68, stated by it to represent the difference between the 80 cent rate and the dollar rate on their gas from May 1, 1906, to March 30, 1908. Since the final decree no further deposit has been made. The number of such consumers was stated by the appellee at the commencement of the suit to be over 390,000. There is no adequate remedy to the individual consumer, who either must pay the dollar rate, relying or the good faith of the company for its repayment in case these appellants shall be successful, or must submit to having his gas supply stopped, or must enter into litigation with this appellee at an expense practically prohibitive. The number of citizens interested in this litigation, as well as the amount involved, is, therefore, unusually large.

Similar questions of law arise also in several similar cases involving other gas companies in the same city, in which preliminary injunctions have been granted, and deposits made with the Clerk which amount to several millions of dollars.

The cause involves also very important questions which have never yet been passed upon by this court, and which have been little considered anywhere. For complainant's property is valued in this record at a sum vastly greater than the amount of capital which has been actually invested by complainant therein. This is because, first, the present value of the land upon which the appellee's plants are situated is greater than its original cost; second, the expense of laying pipes underground in New York City streets has increased by reason of modern pavements, as well as occupation of the soil under the streets for other purposes, so that to duplicate appellee's

present mains and services would exceed what it paid for putting them in; and third, the Circuit Court has found that the appellee owns franchises in the public streets which it values at a large sum, although nothing was paid for them.

The learned judge at Circuit thought the franchise item alone to be sufficient in amount to control the decision of the cause. He states (see record and also 158 Fed. Rep. at pp. 872-7) that as an individual he regards the inclusion of such franchises as a separate element of value to be fallacious, but that he considers himself obliged to give them a separate valuation by reason of certain passages in judicial opinions which he cites. The question has never arisen for determination here, the franchise in the Monongahela case, 148 U. S., 312, having had a conceded value by reason of its including a right to take tolls up to an amount securing an 8% dividend upon the stock of the corporation which owned it. No element of this kind is included in any of the franchises claimed by the appellee. The franchises being valued by the trial judge at $12,000,000, their elimination would so far reduce his estimate of capitalization as to raise the appellee's net income under said statutes to a sum over 6¼%. If further deduction be made so as to reduce the valuation of the land, mains and services to the capital originally invested therein, the rate of return is over 8%. The rate of return on the nominal capitalization of the appellee, minus the book value of its investments in stocks of other companies, is over 7%.

Upon the facts above recited the court will perceive that this case raises certain fundamental questions, as yet undecided, which are of the great-

est importance, and which were not involved and could not be decided in cases where present value was less than original cost.

It is contended that under such circumstances the duty of the state legislature on the one hand is very different from that of a Federal court, applying the Fourteenth Amendment, on the other. It is believed to be the duty of the state legislature to allow a fair rate of profit to a gas company upon the money which it has actually invested in the enterprise; that in estimating the rate of profit the special risks of the business as well as the general rate of return expected by investors in similar enterprises should be considered; and that true public policy requires the rate thus allowed to be not simply fair, but so liberal as to attract investment of capital in similar enterprises, as well as in other businesses that are specially subject to state legislation. It is contended to be the duty of a Federal court, on the other hand, simply to see that property is not taken without due process of law. It is contended that property is not taken within the meaning of the Fourteenth Amendment to the United States Constitution, so long as it is allowed to receive as high a return as is received by property safely invested; in other words, that there is a wide margin between the rate of return guaranteed by the Fourteenth Amendment and the rate of return which a state legislature ought to permit; this margin representing the difference in responsibility as to local affairs between the United States and the State, between the legislature and the judiciary. If this contention be correct, the Federal Constitution guarantees only the minimum average rate of interest on permanent invest-

ments of money, said rate to be computed upon the present value of the capitalization of the company; although the state should permit a much higher rate, computed however upon the money actually invested by the company, and omitting any increment of value that has cost it nothing. Furthermore, it is contended that a separate valuation, for the purpose of increasing prices to the consumer, of a franchise such as those claimed by the appellee (as distinguished from a franchise such as that under consideration in the Monongahela case), not only is fallacious as argued by the court below in its opinion, but also, when the franchise was given without compensation, contravenes the implied understanding of the parties.

In addition to these fundamental questions, various other questions of general importance are raised by this record, as well as questions whose importance is more peculiar to the present case; which questions are set forth in the assignments of error of the respective appellants.

Notice of this motion has been accepted by the appellee.

ALTON B. PARKER,
FRANCIS K. PENDLETON,
WILLIAM P. BUPR,
Of Counsel for the City of New York, appellant.

EDWARD B. WHITNEY,
Of Counsel for William R. Willcox *et al.*, appellants.

May 18, 1908.

Supreme Court, U.
FILED.
MAY 18 1908
JAMES H. McKENNE
CLE

Supreme Court of the United States,

No. 398

OCTOBER TERM, 1907.

WILLIAM S. JACKSON, as Attorney General of the State of New York,

Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,

Appellee.

MOTION TO ADVANCE.

WILLIAM S. JACKSON,
Attorney-General of the State of New York,
Capitol, Albany, N. Y.

Alfred R. Page,
William A. De Ford,
Of Counsel.

Martin B. Brown Co., Printers, 49-57 Park Place, N. Y.

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Supreme Court of the United States.

WILLIAM S. JACKSON, as Attorney-General of the State of New York,
Appellant.

against

CONSOLIDATED GAS COMPANY OF NEW YORK,
Appellee.

No. 775
October Term, 1907.

Notice of Motion to Advance.

Please take notice that upon the record and all the proceedings herein this appellant will move the Supreme Court of the United States, at the capitol in the City of Washington, District of Columbia, upon the 18th day of May, 1908, at the opening of the Court upon that day or as soon thereafter as counsel can be heard, to advance this cause upon the docket of the Court for the October Term, 1907, and to set the same for argument at as early a date as may be convenient to said Court.

Dated New York, the 14th day of May, 1908.

WILLIAM S. JACKSON,
Attorney-General State of New York,

ALFRED R. PAGE,
WILLIAM A. DE FORD,
Of Counsel for Appellant.

To Messrs. SHEARMAN & STERLING,
Solicitors for Appellee,
No. 44 Wall street,
New York City.

Supreme Court of the United States.

WILLIAM S. JACKSON, as Attorney-General of the State of New York, Appellant. *against* CONSOLIDATED GAS COMPANY OF NEW YORK, Appellee.	No. 775 October Term, 1907.

Notice of Motion to Advance.

Please take notice that upon the record and all the proceedings herein this appellant will move the Supreme Court of the United States, at the capitol in the City of Washington, District of Columbia, upon the 18th day of May, 1908, at the opening of the Court upon that day or as soon thereafter as counsel can be heard, to advance this cause upon the docket of the Court for the October Term, 1907, and to set the same for argument at as early a date as may be convenient to said Court.

Dated New York, the 14th day of May, 1908.

WILLIAM S. JACKSON,
Attorney-General State of New York,

ALFRED R. PAGE,
WILLIAM A. DE FORD,
Of Counsel for Appellant.

To Messrs. SHEARMAN & STERLING,
Solicitors for Appellee,
No. 44 Wall street,
New York City.

SUPREME COURT OF THE UNITED STATES.

WILLIAM S/ JACKSON, as Attorney-General of the State of New York, Appellant. *against* CONSOLIDATED GAS COMPANY OF NEW YORK, Appellee.	No. October Term, 1907.

Motion to Advance.

And now comes the appellant and moves this Court, upon a certified copy of the transcript of the record herein, to advance this cause upon the docket of the Court for the October Term, 1907, and to set the same for argument at as early a date as may be convenient to this Court.

Statement of Matters Involved.

The matters involved and the reason for this application are as follows:

This cause presents the question whether or not the statute of the State of New York known as chapter 125 of the Laws of 1906, which fixes the price that may be charged for illuminating gas in the City of New York at eighty cents per thousand cubic feet, takes the property of the appellee without due process of law and without due compensation and denies to the appellee the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the United States; and involves the determination of the following questions:

First—Whether the matters and things charged in the bill of complaint show that the complainant had a complete and adequate remedy at law.

Second—Whether the allegations of the bill of complaint and the facts disclosed by the record show that this suit, although in form brought by a citizen of the State of New York against the appellant as an officer of the State of New York is not, in fact, brought against the State of New York, to test the constitutionality of the said statute.

Third—Whether the record contains sufficient evidence to show that the rate of eighty cents per thousand cubic feet for gas sold in the City of New York does not afford a fair and reasonable return to the companies doing business in the said City, the evidence being limited to the valuation of property of the complainant alone, and further that record does not show but that the said rate would afford a fair and reasonable return upon the value of property employed in the making and distributing gas, in the same territory as complainant, by a company well located and equipped and economically managed.

Fourth—Whether the record contains sufficient evidence to show the reasonable and necessary operating expenses of the complainant. The evidence being limited to its actual receipts and disbursements during a period from November 1, 1904, to December 31, 1905, supplemented in part only by the experience of other periods and being entirely insufficient for that purpose.

Fifth—Whether the valuation of this complainant's property upon which the Court's calculation is based, is correct, it being an estimate of present value, arrived at by a valuation of the reproductive cost of complainant's identical plant and each part thereof, without regard to whether the same was originally economically produced or commercially and economically worth reproducing, or as to obsolence of the type or advancement of the art. And whether the same should not be based either upon the cost thereof or the reproduction of an economically

constructed modern plant that would produce the same kind, quantity and quality of gas.

Sixth—Whether the finding the valuation of the complainant's real estate was not erroneous as being (a) in excess of its original cost to complainant and its predecessor companies; (b) in excess of the true valuation thereof, having been valued as vacant lots, and not in conjunction with the buildings thereon, and for the uses and purposes to which it was devoted; (c) in excess of the value at which it was carried on complainant's books.

Seventh—Whether the valuation of the real estate, plants, mains and services and each of them are correct, being in excess of the sworn valuation made by the officers of the complainant in the return to the State Board of Tax Commissioners, for the assessment of the franchise tax, and of the testimony of its officers before the joint committee of the Senate and Assembly of the State of New York, and being based entirely upon the testimony of complainant's experts.

Eighth—Whether the Court erred in finding that complainant's special franchises should be valued at $12,000,000 and that it was entitled to earn a return thereon.

Ninth—The consideration of various exceptions taken to specific findings as to the estimated profits of the complainant; the existence and validity of franchises; and the total valuation of its tangible property and together with its intangible property.

Tenth—Whether the Court erred in finding that six per cent. is the lowest rate of return which can be considered legislatively fair, just or reasonable, upon the value of the property employed by complainant in the business of manufacturing and selling gas, and that the net annual income which complainant can earn on its gas business as aforesaid is less than six per centum.

Eleventh—Whether a judgment for costs can be given against this appellant as Attorney General of the State of New York.

Reasons for Advancement.

The questions involved are of great public interest and concern the validity of an act fixing the price of a necessity to the four million inhabitants of The City of New York. Many of the questions involved have not been considered by this Court, and have an important bearing on all cases involving rate regulation by States. Pursuant to the preliminary injunction there has been deposited with the Clerk of the Circuit Court for the Southern District of New York twenty cents on each thousand cubic feet of gas sold by the complainant, which at the time of the entry of the final decree amounted to the sum of $4,823,455.68. And there are seven cases similar to this cause brought by gas companies other than complainant that have not yet been tried and are awaiting the decision of this case, in five of which preliminary injunctions have been granted and deposits made with the Clerk which amount to several millions of dollars.

WILLIAM S. JACKSON,
Attorney-General of the State of
New York,
Appellant.

ALFRED R. PAGE,
WILLIAM A. DE FORD,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM 1908.

WILLIAM R. WILLCOX, William McCarroll, Edward M. Bassett, Milo R. Maltbie and John E. Eustis, constituting the Public Service Commission of the State of New York for the First District, Appellants, *vs.* CONSOLIDATED GAS COMPANY OF NEW YORK.	No. 396.

Appeal from the Circuit Court for the Southern District of New York.

APPELLANTS' BRIEF.

In this brief page references, not otherwise stated, are in the record.

This is one of three appeals taken from the final decree in the suit originally entitled *Consolidated Gas Company of New York* vs. *Julius M. Mayer as Attorney General etc. et al.*

There have been changes of parties defendant during the pendency of the suit, and the present

appellants do not hold the same relation toward the controversy that was held by the defendants for whom they were substituted. The statement as to their position in the opinion of the Circuit Court (p. 389) is erroneous. They hold office under a statute which took effect July 1, 1907, succeeding to certain functions of the original defendants Frederick E. Gunnison, John C. Davies and Lucien L. Shedden, constituting the New York State Commission of Gas and Electricity, who went out of office on that day by repeal of the statute under which they had been appointed, and also to certain functions theretofore belonging to the defendant William S. Jackson as Attorney General of the State of New York.

The relations of the parties defendant are a little complicated, owing to three peculiarities of the case: first, that the complainant joined in its bill of complaint two entirely independent controversies, although no point was made by the defendants on the ground of multifariousness; second, that the statutory provision by reason of which Gunnison *et al* were originally joined as defendants has since been declared unconstitutional by the New York Court of Appeals; and third, because the powers pertaining to the office of Attorney General of the State of New York during the first year of this litigation were thereafter divided, and a part transferred to these appellants.

Statement of the case.

This is one of the suits, now so familiar, by which state officials and a municipality are sought to be enjoined from enforcing a maximum rate

imposed under authority of a state statute, upon the ground that the statute violates the Fourteenth Amendment to the constitution of the United States.

The statutes complained of.

The complainant below, Consolidated Gas Company of New York, was one of four companies supplying gas to the public and to private consumers within the territory known as the Borough of Manhattan. Up to the time of the passage of the statutes next hereinafter set forth, it was restricted to maximum rates of $1 per thousand cubic feet as against private consumers and 90 cents per thousand cubic feet as against the municipality (Statute of May 7 1897, ch. 385, Record, p. 5264).

A further reduction was made by the New York legislature by statute of June 3, 1905, which reduced the maximum price for gas sold the City of New York to 75 cents per thousand cubic feet, and provided a *penalty* for violation of the statute to the amount of "one thousand dollars for each offense *to be sued for and recovered in the name of and by the city of New York* for its benefit" (Record p. 21). The defendant the City of New York is interested in the case by reason of this statute only; it has no duty or power to represent the consumer (Richman *v.* Consolidated Gas Co. 114 App. Div. at p. 224; and see, as to exclusive functions of Attorney General and Public Service Commission, People ex rel. Lehmaier *v.* Interurban Street Ry. Co. 85 App. Div. 407; affd. 177 N. Y. 297); and the other defendants have no interest in the statute except so far as

any of them may happen to be taxpayers in said city.

On the same day, by Chapter 737 of the Laws of 1905, the state established the Commission of Gas and Electricity, and gave this commission the power to fix maximum rates (Record pp. 22, 27). The commission was given power to enforce its orders by application to the state courts for a writ of mandamus (p. 28). It was given no power to enforce rates not fixed by itself. The original defendants Gunnison *et al.*, having been appointed commissioners under this statute, investigated the rates charged for gas in the Borough of Manhattan, and by order dated February 23, 1906, directed this complainant company to charge no rate higher than 80 cents per thousand cubic feet (pp. 28-30). That portion of Chapter 737 under which this investigation was held and order made were subsequently, however, declared by the Court of Appeals to be unconstitutional under the constitution of the State of New York (Village of Saratoga Springs vs. Saratoga Gas Co., 191 N. Y. 123).

On April 3, 1906, by Chapter 125 of the laws of that year, the state fixed certain maximum rates for gas furnished to consumers other than the City of New York within the territory of that city. The rate fixed for the Borough of Manhattan (with which alone we have to deal) was 80 cents per thousand cubic feet, and the statute was therefore familiarly known as the "80-cent gas law". The act imposed a *penalty* for its violation of "one thousand dollars for each offense *to the people of the state*" (pp. 30-31).

This statute (substantially following like provisions of Chapter 736 of 1905) contained the fol-

lowing provision as to the *candle power* and *pressure*:

> § 2. The illuminating gas furnished by any such corporation, association, copartnership or person shall have an illuminating power of not less than twenty-two sperm candles of six to a pound, burning at the rate of one hundred and twenty grains of spermaceti per hour tested at a distance of not less than one mile from the distributing holder by a burner consuming five cubic feet of gas per hour * * *. The pressure of illuminating gas in any service mains in the said city at any distance from the place of manufacture shall not be less than one inch, nor more than two and one-half inches.

The portion of the section which we have omitted related to the standard of purity of the gas, and is not here complained of. The provision as to *candle power* is the same as the prior law except that the words "distributing holder" are substituted for the words "place of manufacture" (Record p. 5265). The provisions as to *pressure* are new.

The original and present defendants.

(*a*) *The Attorney General.* The defendant originally first named was Julius M. Mayer, sued "as Attorney General of the State of New York". He pleaded that the suit was against the state (p. 54). Mr. Mayer's term of office having expired on December 31, 1906, his successor William S. Jackson was substituted as defendant upon his own application (p. 321). The Circuit Court held that the suit was not against the state (pp. 421-2) and

this question is not raised or argued by the present appellants; but the final decree is entered against Mr. Jackson as Attorney General and the costs are awarded against him as such, with an apparent suggestion that an appeal be taken upon the point (p. 434); and he has assigned error accordingly (pp. 481, 484). As to the Attorney General *the decree* is that he be (p. 434)——

> "perpetually enjoined and restrained *from suing for the penalty or forfeiture* described in said chapter 125 of the Laws of 1906 or in any way enforcing or attempting to enforce the said Act or the order of the Commission of Gas and Electricity aforesaid against this Complainant."

(*b*) Defendants Gunnison *et al.*, constituting the old Commission of Gas and Electricity, were sued to enjoin them from enforcing their own order aforesaid. The decision of the Court of Appeals in the Saratoga case shows that this joinder was unnecessary. They may be disregarded.

(*c*) *The Public Service Commission.* The present appellants succeeded not only to the functions of the old Commission of Gas and Electricity but also to some of those of the Attorney General, as appears by the following provision of the statute under which the Public Service Commission was established (Laws of 1907, Chap. 429, § 74):

> "Whenever either commission shall be of opinion that a gas corporation * * * is failing or omitting or about to fail or omit to do anything required of it *by law* * * * or is doing anything or about to do anything * * * contrary to or in violation *of law*

> * * * it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the commission shall thereupon begin such action or proceeding [etc.]."

Prior to this statute the Attorney General by virtue of his office had implied authority to commence proceedings of the nature stated in a proper case. This implied authority is superseded by the express authority now given to the Public Service Commission. The Public Service Commission law took effect July 1, 1907, and on October 2 of that year these appellants were substituted as parties defendant by consent (p. 379). By *the decree* they are (p. 434):

> "perpetually enjoined and restrained *from applying for a mandamus or injunction* to compel compliance with said chapter 125 of the Laws of 1906 or with said order of the Commission of Gas and Electricity or in any other way enforcing or atempting to enforce the said act or the order of the Commission of Gas and Electricity aforesaid against this Complainant."

So far as this suit and the final decree refers to the order of the Commission of Gas and Electricity it is of course unnecessary, in view of the decision of the Court of Appeals; but the motion for reargument of the Saratoga Gas case in that court was not finally disposed of until after the entry of the decree.

(*d*) *The City of New York* is by the decree (p. 434)

> "perpetually enjoined and restrained *from suing for the penalty or forfeiture* described in said chapter 736 of the Laws of 1905 or in any other way enforcing or attempting to enforce the said Act against this Complainant."

(*e*) William Travers Jerome as District Attorney of New York County was also a defendant in the case by reason of his statutory authority to sue for penalties in the name of the state, an authority which he shared with the Attorney General. The decree joined him with the Attorney General, but he considered it unnecessary to join in the latter's appeal.

Omitted Defendants.

The parties really and beneficially interested in the enforcement of the 80 cent gas law—the private consumers of gas in the Borough of Manhattan—are not joined as defendants herein. It does not even appear that any one of the official defendants is a resident of that Borough. The omission was not accidental, but was called to the attention of the Circuit Judge, who purposely refrained from enjoining the consumers, although recognizing that they would probably leave the defense of their rights to their statutory protectors (pp. 136, 145). But the latter were not sued as their representatives in the sense of the term used in equity procedure (p. 136), and this has been recognized by the State courts and has an important bearing upon the question of jurisdiction, as will be seen.

History of the Litigation.

We have had no actual experience under the 80-cent gas law, because its enforcement was immediately enjoined by Judge Lacombe by a temporary restraining order (pp. 36-7). The injunction was continued by a further order made upon affidavits of both sides (pp. 145-7). The opinion of Judge Lacombe is to be found in the record at pages 135-45 and is reported at 146 Fed. Rep., 150.

On July 5, 1906, Judge Lacombe referred the case "to Arthur H. Masten, Esq., one of the Standing Masters of this Court to take the testimony, make all needed computations and fully find the facts, all in conformity to the practice indicated by the Supreme Court in Chicago M. & St. P. R. R. *v.* Tompkins, 176 U. S., 179." He directed the Master to serve a draft report in accordance with the local practice, and to "be careful in taking the testimony to conform to the practice indicated in Blease *v.* Garlington, 90 U. S., 1." He apportioned among the parties the ninety days allowed for taking testimony; directed the Master when necessary to sit from day to day and hold two sessions a day; required leading counsel to provide competent junior counsel if they should wish to take a summer vacation; and authorized either party to read the testimony of any witness from the record of the Gas Commission upon producing the witness for further cross-examination (pp. 148-9, 150). The Master in pursuance of the court's policy in pressing the suit expedited the complainant's case by permitting it to introduce confessedly incompetent evidence, compiled from sources not open to the defendants for a deliberate outside investigation or fishing excursion except so far as complainant

chose to open them in such a way as to enable it to get in its side of the case with greater speed than the ordinary rules of evidence permit, and putting a burden upon defendants from which they are usually much relieved by the necessities of the complainant, from which a fair working compromise can be evolved (see for instance pp. 537-8, 632, 743-4, 778-9, 803, 840, 1043 and the Master's explanation at pp. 1859 and 2356-7). The case was conducted all the way through under great pressure from the Master and the Court, as to the taking of testimony (see for instance pp. 1130, 1558, 1661, 3160, 3250-1, 3555-6, 3579, 3598-9, 4512) and yet without corresponding pressure as to supplying the defendants with information (see for instance pp. 1047, 1856), and under circumstances which seemed to us to have put the complainant, which had also of course the original advantage of being the insider, in a position of great advantage. But these appellants were not before the court at that stage of the case, and we understand that counsel for the City of New York will discuss this phase of the case, so far as it may warrant discussion in this court.

The cause was argued before Judge Hough, and the final decree is to be found at page 430. His main opinion is to be found at page 388, and his supplementary opinion at page 422. He disallowed some of the large items of capitalization allowed by the Master, largely reduced others, and recalculated the expenses and income. The Master, whose main report covers pages 151-250 of the record and whose rulings on questions submitted by the parties cover pages 252-91, reached the conclusion that "the property on which complainant is entitled to a return" (termed in the

final decree its "capitalization") is $83,357,000, and that its net earnings under the legislation in question would be $2,327,328.31, or 2 $^{8}/_{10}$% (pp. 247-8). Judge Hough found "the true valuation as of the time of the beginning of this suit of the complainants' property actually employed in its business of manufacturing and supplying gas" to be $59,831,435, and its net income under this legislation to be $3,024,592.45 (p. 432), a little over 5%.

The oral testimony.

For the purpose of this brief nearly all of the testimony on behalf of the defendants, occupying the whole of Volume III and the first portion of Volume IV of the record, or from page 1890 to page 3854, may be passed over.

The bulk of this consists of testimony of three witnesses, Messrs. Bemis and Marks on behalf of the city and Mr. Edgerton on behalf of the Attorney-General. The testimony of these gentlemen was not accepted by the Master. Without discussing whether or not any part of their testimony ought to have been given weight for the purposes of this appeal, we shall accept the Master's view and base no argument upon anything in it. The complainant in its argument below made much of a few concessions contained in this testimony, concessions which were generally steps in a calculation that it would have found disastrous to accept *in toto*, and which are entitled to no more weight than the rest of their evidence. The Master (doubtless owing partly to his helplessness under the rule in Blease v. Garlington) permitted a very large amount of so-

called expert testimony on both sides, which a tribunal having power to exclude testimony would probably have excluded. We shall submit this case upon the facts proved, and not upon the speculations of witnesses as to their effect.

Most of the other witnesses for the defendants were called upon points as to which the Master decided in defendants' favor, or upon points as to which we acquiesce for the purposes of the appeal in his decision.

The oral testimony in this portion of the record to which we shall direct the court's attention will be practically confined to brief extracts from the testimony of the three experts produced on behalf of the defendants upon the present valuation of the complainant's real estate, and one or two admissions made by complainant's officers or witnesses in previous testimony, which were allowed to be read into the evidence by the city's expert, Prof. Bemis.

Certain of the counsel before the Master seemed to be under the impression that documentary matter could be got upon the record by asking some witness upon direct or cross-examination whether he knew of it. Passages alleged to have been extracted from scientific publications or elsewhere, and which were read to witnesses without being recognized by them, were subsequently used as if they were facts proved in the case. Caution is to be observed in the treatment of this class of material.

Our argument will be based upon three classes of testimony: First, that of the complainant's

main witnesses, (particularly its Vice President, Walter R. Addicks; its Secretary, Robert A. Carter; its Chief Engineer, William H. Bradley; its Superintendent of Mains, Colin C. Simpson; and its leading expert, Alexander C. Humphreys; its real estate experts, William H. Wheelock and Edmund C. Preiss; and its construction expert, Frederick J. Mayer) especially as developed in their cross-examination by Mr. Page, whose previous experience both as a member of the Stevens Committee of 1905 and as counsel in the Gas Commission investigation of 1905-6 had familiarized him with the facts of the case, so far as they had become accessible to outsiders; second, certain exhibits prepared at the request of its own counsel or of Mr. Page by officers of the complainant company; and third, the facts developed in the legislative investigation of the complainant company by the Gilbert Committee of 1885-6.

We do not wish to be understood, however, as conceding that this court for the purposes of the present appeal should regard all of the complainant's witnesses as trustworthy. The contrary is especially the case with regard to the testimony of Mr. Carter, its secretary. The sworn statements made by him to the tax officers, and his attempts at explanation of them, deprive him of any standing as an expert witness, although we have no reason to doubt the correctness of the extracts which he furnishes from the books of the company. The value of the expert testimony of Dr. Humphreys is also much weakened by his unsuccessful attempt to explain satisfactorily the testimony which he had given in the Holyoke investigation, when called to testify by the city.

The Exhibits.

Certain of the most convenient and valuable of the exhibits, although introduced by the state or city, are admissions of complainant, such as its tax report of 1905 (State's Exhibit C) and its complaint against the assessment of 1906 (City's Exhibit 65); or else statements made up by its employees at defendants' request, such as the statement of book valuations of its investments in securities of other companies (State's Exhibit B), and its tabulation of repairs and renewals, State's Exhibit L). Other useful exhibits are certain tabulations prepared from the complainant's books by defendants' experts, such as that setting forth the monthly record of gas purchased, made and sold for the calendar year 1905 (Vol. V, City's Exhibit 87B), that of the complainant's real estate (Vol. VI, City's Exhibits 87 A, B, C, D, E), and those made from the books of complainant's predecessor companies in 1885 by Mr. Yalden (City's Exhibit 48). Some slight corrections were made by complainant in the first of the tabulations just referred to from City's Exhibit 87, but they were not sufficiently important to affect materially the calculation.

The Yalden account (City's Exhibit 48) would of course have been of doubtful competency had it been objected to, as Mr. Yalden was long since dead, and some of the books from which his figures were drawn have disappeared. It is in evidence without objection, however. Another exhibit to which objection might have been made upon the ground of competency, but which has been admitted by consent and is for some purposes valua-

ble, is Complainant's Exhibit 369, comprising pages 6071-6561 of the record. This is the entire testimony taken before the Gilbert committee of 1885, containing the evidence of many witnesses since deceased. There are also a number of other exhibits introduced by the complainant to which objections that seem to us well founded were taken at the time, but which are convenient and seem to be correct, and which we have accepted as such.

There are certain exhibits in the case, however, which together occupy considerable space, which seem to us to be entirely improper, upon which we shall base no argument, and upon which it seems to us that no argument should be based by any of the parties hereto.

The real estate assessments of 1906. These are set forth in State's Exhibit A (pp. 4922-4). The history of this exhibit is as follows: Complainant undertook to prove from its first witness the appraised value of its respective parcels of real estate for the current year. The assessments were offered "as some evidence of the value of our real estate." Objection was made to the competency of the evidence, and it was very properly excluded by the Master. Nevertheless, under the rule in Blease *v.* Garlington, it had to go into the record (p. 503). It appeared that the witness had been abstracting the records, and he produced from his pocket a memorandum from which he read off certain figures (pp. 504-5). Counsel for the state desired to have the memorandum marked in evidence as part of the cross examination, but without prejudice to the objection already made. It seems to us that that course was proper, and that the pro-

cedure under Blease *v.* Garlington is impossible without such a privilege to the objecting party. The Master however said that the defendant could not "offer it with strings tied to it," but admitted it and marked it a state exhibit (p. 520). The Master then seems to have considered that the state had waived its objection to the asesssed values, and proceeded to use them in the decision of the case. Their introduction led to the subsequent introduction by the city of a large mass of petitions verified by the complainant and objecting to many of these assessments as too high (pp. 2103-62).

Gilbert Committee Report of 1886. This appears as Complainant's Exhibit 227 at pages 5325-88 of the record. The facts are these: An investigating committee was appointed by the State Senate in 1885 for the purpose of inquiring whether the statute under which the complainant company had then just organized had been violated, and whether the capitalization of the company was fair. The committee consisted of Senators John I. Gilbert, Chairman; Thomas Robinson and Michael C. Murphy. It appointed counsel and an accountant, and the testimony and accountant's report are to be found in full in the record. The committee failed to agree. The chairman reported adversely to the company. Messrs. Robinson and Murphy reported in its favor. Their reports were lengthy, and merely expressed the variant views of these gentlemen on matters as to which this court now has all the information that they had, and considerably more. It is conceivable that the opinion of the chairman may have outweighed in the estimation of their neighbors and

contemporaries the combined opinion of the other two members, or *vice versa*. It seems to us that there were some mistakes in both reports, and that they are incompetent for any purpose.

Affairs of other localities. A large amount of evidence, oral as well as documentary, has been introduced as to the capitalization, earnings and dividends of particular companies in other localities, and as to the regulations and forms of accounts prescribed elsewhere, and particularly in England and in the State of Massachusetts. This line of testimony originated, indeed, from the defendants' side, but had the natural effect of a bad example. The capitalization, gross and net earnings and dividends of another company, situated in another city, raise a collateral issue, whose fair trial requires a volume of testimony and exhibits of its own. None of the collateral issues thus raised were actually tried out in the present case, for defendants used up their allotted time in their main case, and there was no time left for surrebuttal. The position of the present complainant is so immensely stronger than that of almost any other gas company in the world, and the few whose situation is comparable in strength are so differently situated in various respects, that trial by analogy, which can sometimes (however improper under the rules of evidence and however oppresive by way of expense) lead to fairly good results when applied to one of a group of similar cities of similar size, is useless here. The laws, regulations and forms of action prescribed by other states and nations are also useless as well as incompetent. They are not prescribed for the purpose of ascertaining the net earnings of the com-

panies from the point of view of the Fourteenth Amendment to the Constitution of the United States. These remarks apply to all such exhibits as Reeson's Complete Gas and Water Acts (City's Exhibit 53), the Boston Graphic Record (City's Exhibit 58), the Massachusetts tabulations (Complainant's Exhibits 378-390), the Philadelphia ordinance (Complainant's Exhibit 391), the estimates of gas cost in Danbury, Conn. (Complainant's Exhibits 392-4), and the considerable number of similar papers scattered through the oral testimony.

Complainant's history.

Complainant was organized in the fall of 1884 by consolidation of six existing gas companies.

These companies, and the dates of the franchises then owned or claimed to be owned by them, were as follows:

New York	Gas Light	Company		1823
Manhattan	"	"	"	1833
Metropolitan	"	"	"	1858
Harlem	"	"	"	1855
Municipal	"	"	"	1874
Knickerbocker	"	"	"	1865 and 1871

The Knickerbocker Company was then owned by the Municipal. The charter of the Municipal Company has since confessedly expired. It is contended by the state and city that the original franchises of the New York, Manhattan, Metropolitan and Harlem companies have also expired, and that they are now holdovers, either on sufferance or, at the best, as tenants from year to year. It is also contended by the state and city that the fran-

chise of 1865 claimed by the Knickerbocker Company was invalid, and that neither of the two franchises claimed by that company ever became its property. The law and facts as to these franchises are set forth in Appendix A to this brief.

Complainant's manufacturing plants were derived as follows:

14th	St.	plant	from	Manhattan	Co.
18th	"	"	"	"	"
21st	"	"	"	New York	"
42d	"	"	"	Metropolitan	"
44th	"	"	"	Municipal	"
99th	"	"	"	Knickerbocker	"
111th	"	"	"	Harlem	"

Of these the 18th St. and 111th St. plants have been partly condemned by the city. The former has been altogether abandoned and the latter is in disuse (pp. 1713-14). The old 65th St. plant, purchased by the Metropolitan of the Manhattan company, had before the consolidation been destroyed in a similar manner (pp. 6343-4). It is now represented by a holder station, and there is a holder also at 111th St.

After the consolidation, the complainant continued as a gas company, without other complications, until the year 1900. It then became also a holding company on a large scale, this being partly the result of a gas war between itself and the other companies operating in the Borough of Manhattan. Its principal outside investments are now in the form of stock, bonds and securities of the three rival gas companies (the New York Mutual, Standard and New Amsterdam, the latter in turn owning the stock of the Central Union, a company operating in the Borough of the Bronx); similar

securities of electric companies; and similar securities of the Astoria Light, Heat and Power Company, a corporation which commenced manufacturing gas just before the termination of the testimony before the Master herein. It also holds various securities as temporary investments of a fund derived from the issue of debentures for the purposes of the Astoria enterprise.

Complainant's capitalization.

Nominal capital. Complainant's original capitalization was $39,078,000. It had been originally intended to be $45,000,000, but the New York Mutual Gas Light Company, to which was allotted $5,922,000, did not join (see pp. 4821, 4825). The manner in which these figures were arrived at was described in the testimony before the old Gilbert committee (pp. 6078, 6084-5, 6124, 6134, 6138-9, 6144-6, 6161, 6308, 6372-3, 6513, 6521-2, 6524). The tangible property was first appraised. Each company employed its own appraiser, both for its own property and, where desired, to estimate upon the property of the others. It was recognized that, as long as the appraisements were proportionately fair, it was of no particular importance as between the companies whether they were high or low. There was a difference of opinion as to whether the capitalization should be made high or low, but the majority of the committee (which had been to a certain extent packed by giving the Municipal and Knickerbocker each one member, although the latter company was owned by the former,) decided to have it high. One of the appraisers originally employed was dropped because he did not appraise quick enough or high enough;

but Mr. Rowland, who took his place and who either prepared or revised the appraisements of all of the manufacturing plants except that of the Harlem Company, was concededly a man of standing. The basis of the appraisal, however, was not what the properties were intrinsically worth, but a larger amount representing what they could have been duplicated for at the time. The real estate, mains, services and meters were appraised by the members of the committee themselves.

The day after the appraisement of the tangible property was completed, the total capitalization was taken up for consideration (pp. 4925, 5012, 6140, 6377, 6520-1). Complainant contends that this total valuation was arrived at by taking the total valuations of the stocks of the various companies as they then stood in the market, plus the bonded indebtedness. This was indeed the statement of one or two of the witnesses, and is followed in the report of the committee, but it is not true, and the total valuation was very much larger than the combined values of the capital stocks and bonds (pp. 84-88, *infra*). Having reached by agreement a figure for the total capitalization, an amount equal to one thirtieth thereof was reserved for working capital. The difference between the remaining twenty-nine thirtieths and the total appraised valuation of tangible property was then put down as "Rights, franchises, etc.," and was divided up among the companies on a somewhat arbitrary basis (pp. 88-91, *infra*).

The following tabulation, taken from pages 4821 and 5605, gives the appraised valuation of the tangibles of each company, its finally allotted share in the "Rights, franchises, etc.," its actual allotted share (being the sum of the two preced-

ing figures) and its nominal share (being the last figure plus its nominal contribution to the working capital):

	Tangibles.	*Intangibles.*	*Actual share.*	*Nominal share.*
N. Y. Co.	6,143,000	1,417,000	7,560,000	7,821,000
Manhattan Co.	9,611,000	2,329,000	11,940,000	12,352,000
Metropolitan Co.	5,312,000	1,863,000	7,175,000	7,422,000
Municipal Co.	3,925,000	1,175,000	5,100,000	5,276,000
Knickerbocker Co.	2,472,000	528,000	3,000,000	3,104,000
Harlem Co.	2,531,000	469,000	3,000,000	3,103,000
	29,994,000	7,781,000	37,775,000	39,078,000

The capitalization has been increased to $80,000,000 in two stock issues of March and July, 1900 (pp. 5018, 5020), besides an issue of nearly $20,000,000 of convertible debenture bonds for the purposes of the Astoria enterprise (p. 855).

Complainant is now, however, as just stated, a holding corporation as well as a gas corporation. The book value of its outside holdings, apart from the securities of the Astoria Company, is $53,041,134.52 (State Exhibit B, p. 5052). This book value represents their actual cost (see pp. 847-9, 852-3, 855-6), except that the New York Edison Co. stock cost only $15,517,200 instead of the amount stated. As thus corrected it is as follows:

Brush Electric Illuminating Co., bonds	$275,000.
New Amsterdam Gas Co., stock and bonds	4,814,608.03
New York Edison Co., stock	15,517,200.
New York Mutual Gas Light Co., stock	5,703,290.65
Standard Gas Light Co., stock	14,587,495.23
United Electric Light & Power Co., stock, bonds and loans	9,452,063.48
Westchester Lighting Co., stock and bonds	5,707.50
National Coke & Coal Co., stock	50,000.
	$50,405,364.89

To the $80,000,000, however, must be added $1,387,000 for bonds outstanding, $32,518.76 for

premiums on bonds, and $14,322,217.95 for premiums on capital stock (State Exhibits F, S, pp. 5075, 5260). On the other hand there was reserved in 1884 from the original issue a sum of $2,329,000 to pay off obligations of the old companies. These were paid off by 1899 (p. 5037), presumably out of the item last above stated. Its nominal capital invested in the gas business is therefore as follows:

Present stock, par value	$80,000,000.00
Premiums on bonds and stock	14,354,736.71
Debenture bonds of 1888	1,387,000.00
	$95,741,736.71
Deduct bonds paid off	2,329,000.00
Present nominal total capitalization	$93,412,736.71
Less stockholdings as above	50,405,364.89
Present nominal gas capitalization	$43,007,371.82
Less original capitalization of 1884	39,078,000.00
New capital since 1884	$3,929,371.82*

Probably this last figure is somewhat too high, and should be subject to further deductions on account of outside investments. For instance, it appears that there is an outstanding loan to the East River Gas Company, part of which was made prior to the issue of the Astoria debentures, and therefore should apparently be charged to this account (See p. 856 and State's Exhibits Q, R, p. 5260).

* Of the $14,354,736.71 item, $11,205,975 are premiums on the stock issues of 1900 (p. 849). The balance, added to the $1,387,000 item and subtracting the $2,329,000 item, gives the amount of new capital that came in before 1900—$2,206,261.

Capital actually invested. The amount actually invested by the stockholders of the constituent companies out of their own pockets is very much less than $39,078,000, the difference representing, first, arbitrary writing up of intangible property at the time of the consolidation of 1884; second, appreciation in the value of land; and third, extensions of the plant purchased out of surplus earnings.

Mr. Yalden's tables showing the capital actually contributed by the stockholders of the constituent companies are liberal, since some of the capital was paid for in property and not in money. $1,178,000 of Metropolitan stock was issued for property at fifty cents on the dollar (pp. 6168-9, 6332). The figures are as follows (pp. 5615, 5646, 5672, 5690, 5703):

	Issued for cash.	*Issued for property.*	*Stock dividend.*	*Total.*
N. Y. Co.....	750,000		3,250,000	4,000,000
Manhattan Co.....	3,280,000		720,000	4,000,000
Metropolitan Co...	612,700	1,887,300		2,500,000
Harlem Co.	1,569,050	150,950	280,000	2,000,000
Municipal Co.....	2,515,300	458,900	25,800	3,000,000
	8,727,050	2,497,150	4,275,800	

Total stock	$15,500,000
	4,275,800
Stock paid for in cash or property	$11,224,200
Deduct for Metropolitan stock issued at fifty cents	589,000
	$10,635,200

The $17,000,000 capitalization sometimes spoken of includes the $1,500,000 stock of the Knickerbocker company (see p. 5731); but the assets of this company belonged to the Municipal com-

pany at the time of the consolidation, and are represented by the last one million dollars of the cash capital of the Municipal (pp. 5600-1, 5690).

The $25,800 of the Municipal company represents a discount on stock sold below par; $100,000 of the stock issued for property was paid for stock of an old corporation whose advantage to the company is not shown; and the balance of $350,000 was issued in 1876 and 1877 for patents, which have now of course expired (pp. 5599-5600). The $25,800 is treated by Mr. Yalden as equivalent to a stock dividend (p. 5726); and probably the figure $10,635,200 is somewhat larger than the actual value contributed by the subscribers to the stock of the constituent companies.

There were some bonds and other obligations outstanding at the time of the consolidation, which were assumed by the complainant company, amounting to $2,329,000 (p. 5606). These it subsequently paid off, and they are not now represented in its capitalization.

If, therefore, stock issues representing surplus earnings over and above dividends are to be regarded for the purpose of a case like this as contributions by the consumers rather than contributions by the stockholders, the amount of capital actually invested is as follows:

Investment of constituent companies, not over.....	$10,635,200.00
Subsequent additions	3,929,371.82
Capital actually invested..	$14,564,571.82

The additions to the nominal capitalization which represent stock dividends, or other sums representing surplus earnings over and above

ordinary dividends, all date from periods when very large actual dividends were being declared (pp. 28-9 *infra*). Indeed the old companies were deliberately hiding away the amount of their profits by their bookkeeping, as complainant's counsel pointed out below, citing Mr. Yalden's conclusion as expert accountant to the Gilbert committee, at page 6396.

Complainant's Net Earnings and Dividends.

There has been no real investigation into the complainant's net earnings except those for the fourteen months ending December 31, 1905. This was not by consent, as might be inferred from the Master's language on pages 155, 216, but because the complainant insisted, and the Master ruled, that the year 1905 should be taken as the standard, on the ground that the time allowed by the court for the trial of the case did not permit more thorough investigation. The Master permitted complainant to introduce evidence from other years for the purpose of changing certain figures in the 1905 account, and finally permitted to defendants full investigation as to these particulars, but did not permit them to make a "fishing excursion" to see if any other corrections should be made (see pp. 565, 632, 779, 803, 1043, 1047-8, 2175, 2198-9, 2286-8, 3275-8), and excluded information as to other periods when they picked up any (pp. 3579, 3598-9).

The Court, after allowing to the complainant some considerable items which were contested, has found that its total net income for the calendar year 1905 was $5,891,597.45 (p. 407). It finds

that if the complainant company during the calendar year 1905 had been upon the 80 cent basis, its net income would have been $3,224,592.45.*

The former figure was at the rate of over 13½% on the nominal capitalization employed in the gas business, and over 40% on the capital actually invested and employed in the gas business. The latter figure would have been at the rate of about 7½% on the nominal capitalization employed in the gas business, and nearly 23% on the capital actually invested and employed in the gas business (see pp. 23, 25 *supra*).

Complainant was permitted to put in evidence a tabulation purporting to show its rate of dividend since 1884 (Complainant's Exhibit 83, p. 5035), but the tabulation is valueless and misleading. For instance, from 1900 on the complainant was not only a gas company, but also a holding company. Nearly $37,000,000 is represented by its stock holdings (p. 23 *supra*), on which it nets less than 3% (State Exhibit B, p. 5052). It is also now paying interest on nearly twenty millions of 6% debenture bonds issued for the purpose of raising money for its investments in the stock and securities of the Astoria Company. Part of the cash thus obtained is being held in temporary investments, but the balance is not at present bringing in any actual return (pp. 742, 749, 865, 5034, 5077). The present abnormally low dividend rate due to these heavy outside commitments is being used on the court and the public for the purpose of giving the impression that the fear of 80 cent gas is keeping down present dividends.

But when we go back of 1900 to the period when the complainant was a gas company and not a holding company, the table is misleading because

* $3,234,997.45 (p. 407) *minus* $10,405 (p. 423).

it is computed upon a valuation which exceeds the total value of its property, exclusive of the fictitious items included in the capitalization of 1884. The total dividends for the 15 1-3 years from November 11, 1884, to March 15, 1900, appear as $33,345,598.50, or a little over $2,100,000 per annum. This is at the rate of over 7% on the $29,994,000 appraised value (see p. 22 *supra*). The assets increased nearly $7,775,000 during this period (p. 5032), of which about $2,206,261 came from new capital (p. 23, *supra*). Hence over $5,500,000 must have been contributed from earnings. So that more than an 8% dividend was earned, of which one-sixth was reinvested.

Dividends of the constituent companies before 1884. These are fully tabulated in the report of Mr. Yalden.

The New York Gas Light Company was the oldest of the constituent companies. It was created in 1823 and commenced paying dividends in 1825. In that year it paid 6.33%; in the following year 11.58%; and it thereafter averaged over 10% for the next twelve years. It paid 9% from 1839-1849 inclusive; then 10% until 1856, with an extra dividend of 10% one year; it paid 30% in 1857, 15% in 1858, 40% in 1859, 41% in 1860, 45% in 1861 and a regular dividend of 110% with a stock dividend of 33.33% in 1862. Mr. Yalden's figures after this date are too low for this company, because (unlike his tabulation in the case of the Manhattan Company) he computes the dividends upon the inflated capital instead of upon the genuine capital. Applying his figures to the genuine capital of $750,000, the dividends for the succeeding years are as follows: 1863 26.66%, 1864 40%, 1865 66.66%, 1866 120%, 1867 93.33%, 1868-70,

each year, 66.66%, 1871 506.66%, and for the period from 1872 to 1884 an average yearly dividend of over 60% (pp. 5668-70).

The Manhattan Gas Light Company obtained no franchise until 1833 (p. 5089). Its first substantial contribution of capital was made in that year, and it seems to have been first ready to do business in 1836 (pp. 5612, 5626, 5630). It paid dividends averaging less than 4% for its first seven years, but thereafter averaged a much higher rate, and in 1856, beside the regular dividend, declared a stock dividend, the two together amounting to 44.17%. Thereafter the dividends ranged all the way from 9.76% in 1880, after a gas war, to 42.68% in 1876 and 1884, 46.95% in 1872, 48.78% in 1875 and 53.76% in 1873. The average dividend for the entire period from the charter of the company to the consolidation was over 25% (pp. 5642-4).

The Metropolitan Gas Light Company appears to have been first equipped to do business in 1863 (p. 5684). It began dividends in 1866, with a dividend of 8%, and as early as 1870 was able to declare one of 53%. It passed the dividend in 1873, but in other years paid at so high a rate that its average for the whole period from the date of its organization, in 1860, was over 13½% (pp. 5688-9).

The Municipal Gas Light Company commenced in 1876 and declared its first dividend in 1879; yet in 1884 it had already averaged about 14½% (p. 5701).

The older books of the Knickerbocker Gas Light Company are lost (pp. 6228-9, 6242). In 1880 it was absorbed by the Municipal.

The Harlem Gas Light Company was the least prosperous of the lot. It averaged considerably

over 10% up to 1872, then reduced to 8% for four years, to 6½% in 1877, suspended for four years, paid 6% for two years, and at the rate of less than 5% for 1884 (pp. 5716-17).

Complainant's valuation as of May, 1906.

This valuation, called by the court "the capitalization of complainant for the purposes of this suit" (p. 430) is found by the court to be as stated in the following tabulation (p. 432):

Real estate	$11,985,435
Plants	15,500,000
Mains	12,636,000
Services	1,994,000
Meters and miscellaneous	4,100,000
Working capital	1,616,000
Total of tangible assets	$47,831,435
Special franchises	12,000,000
Total	$59,831,435

The court reached this result by reducing the Master's estimates of real estate and working capital, and striking out its investments in other companies, together with the item of goodwill (pp. 430-1).

We now take up these various items separately:

Real Estate.

This phrase is used in the record as describing all of the complainant's real property outside of the manufacturing plants and

holders and the mains and services. It includes land, bulkheads, office buildings, buildings rented to tenants, sheds, &c. It was capitalized by the Master at $13,461,000 (pp. 160, 165, 247). The Court did not disturb any of his valuations, but disallowed certain items as not pertaining to the gas business, thus reducing the total figure to $11,985,435 (pp. 394, 422-3, 430, 432). This is merely an approximate figure, reached by a sort of compromise, the court considering that absolute accuracy was impossible and that any errors unfavorable to complainant were offset by corresponding errors unfavorable to defendants (pp. 423-4). Appellants' objections are set forth at page 436 (Assignment II).

Book Value.—Complainant's book valuations were made in 1884 by the consolidation committee. They were based in part on appraisements, in part on figures made by the officers of the consolidating companies, whose correctness was disputed (pp. 6144, 6145, 6161, 6308, 6513, 6523). They total $10,332,000. Subsequent transactions have increased the amount to $10,929,789.87 up to October 31, 1905 (Complainant's Exhibit 79, p. 5032), as certain of the original land has been sold or condemned since 1884 (p. 516), while other land has been purchased (pp. 499-500). The book value is also to be diminished by reason of the land which is still included because it has not yet been paid for, although it has been taken by the city (p. 156), and by reason of the lots disallowed by the Master and court (pp. 165, 394).

Assessed Valuation.—The Master excluded the assessed values of the various parcels as incom-

petent (pp. 503-9). Nevertheless, under the rule in Blease *vs.* Garlington, they went into the record. They total $8,508,100 (p. 509). The city therefore introduced a series of petitions, signed by the complainant and verified by its Vice-President, complaining of assessments as "in excess of what the property would sell for under ordinary circumstances" (pp. 2103-62). Upon the hearing there was a conflict of testimony as to these assessments, complainant's real estate experts claiming that it was the general custom to assess at less than true value, while defendant's experts considered them as often too high, Mr. Thompson stating that since 1903 at least "the assessed valuation *of the Gas Company* in almost every instance has been very high indeed" (p. 2219). This would seem to be in line with complainant's theory as to the malicious intent of the public authorities, but the assessments are incompetent, the assessors not having been called nor their expertness as valuers of real property shown. The Master's ruling to that effect is supported by the weight of authority (Flint *v.* Flint, 6 Allen, 34-37; Randidge *v.* Lyman, 124 Mass., 361; Anthony *v.* R. R. Co., 162 Mass., 60, 65; Martin *v.* R. R. Co., 62 Conn., 331, 343; Hanover Co. *v.* Ashland Co., 84 Pa. St., 279, 285; Nelson *v.* Village of West Duluth, 55 Minn., 497, 499; Lockhart *v.* Woods, 38 Ala., 631; 2 Lewis on Eminent Domain, § 448, and cases cited). The assessed valuation in the Jasper case seems to have been considered by this court because it was in the nature of an admission by the company (189 U. S., at pp. 443-4). These assessments are for local taxes, in which the State does not share. They are not

made by State officers, and are not admissions of the State.

Cost of Reproduction or Duplication.—If the correct measure is to be "the amount required for complainant's gas business upon the basis of cost of reproduction,"—or its equivalent, the amount which a rival company would have to pay in order to duplicate complainant's outfit with another equally effective,—complainant has not supplied us with sufficient evidence to reach an exact figure, but has supplied us with enough to show that a large cut would have to be made in the court's valuation. The burden was here, as everywhere else, of course upon the complainant.

All of the manufacturing plants, including the "relief holders" at the respective works, would undoubtedly be located outside of the Borough of Manhattan, and connected by a tunnel; in other words, a rival company would doubtless do precisely what this complainant until very recently intended (if it does not now really intend) to do.

We quote as follows from the cross-examination of Mr. Bradley, complainant's chief engineer (p. 625):

> "Q. There is room on your vacant land in the City of New York for the construction of some other plants and some other holders, is there not? A. We might make a piece of patchwork gas plant; there is room for holders, and we might continue to patch, and keep patching up indefinitely, but it will be more expensive both to the company and to the consumer to undertake to do that.
>
> Q. You do not call 'patching up' the construction of a new plant, do you? A. When I say 'patching up' I mean patch on to some

other works. Where the site is not desirable, or the site is too valuable, or too much surrounded by dwelling houses.

Q. Then the value of the site does have something to do with the question. You say the site might be too valuable? A. Yes, in that respect.

Q. What do you mean by that? A. *Because where a site is sufficient to build one plant in the City of New York, it is probably worth more than the whole Astoria plant, where there will be twelve plants* [sic],

Hence a tract in the Borough of Manhattan (the witness is evidently using "the City of New York" in its archaic sense) would be worth for gas purposes but a small fraction of its value for other purposes.

But while the manufacturing plants would be placed by any company in some location like that in which complainant intends to place them, for the reason stated by Mr. Bradley, the distributing holders would be left in Manhattan (the distinction between a relief and a distributing holder being explained at pages 656-7 by him). An economical distributing holder will have a capacity of at least 5,000,000 cubic feet. Comparing this with four of the old fashioned holders of 500,000 feet each, he says that it will "occupy the same ground space, therefore it is much more economical to build large holders than small ones" (p. 640). They have been growing steadily larger since 1884, and none have been built since then of less than 3,000,000 feet, except one small one in a suburb. Their total capacity (excluding one that has been condemned) is 29,200,000 feet (pp. 587-8). The latest is at 132nd Street near the Hudson river, with a capacity of 5,000,000 feet,

finished in 1906 (pp. 541-2). The land upon which it is built cost $235,000 in 1892, is assessed at $265,000, and is valued by the Master at $445,000 (pp. 500, 509, 4896, 160). The total holder capacity is 44,270,000, but this includes all of the relief holders at the various stations (pp. 540-1). The holders up to three-quarters of the daily manufacturing capacity of coal gas plants and one-half of the daily manufacturing capacity of water gas plants must be regarded as relief holders (pp. 1639-40). The required capacity for the distributing holders is the balance of the total manufacturing capacity of the plants (p. 1640). This as to coal gas is 9,500,000 feet and water gas 41,500,000 feet (pp. 1714-5). Hence the distributing holders required would have a capacity of 23,125,000 feet, and on the basis of the 132nd Street holder site would require real estate of only $2,058,125 in value even at the Master's very high figure. To this should be added the Irving Place headquarters valued at $300,000; also the properties described at pages 1150-1, 1152-3, used for office and local purposes, valued at $182,000 (p. 159), making in all $2,540,125.

The real estate at Astoria actually cost the complainant $1,132,558.28 (p. 1646) although it is much larger than necessary to supply the gas now being made by the company (p. 577). A tunnel large enough to carry 60,000,000 feet (see p. 543) would cost about three-quarters as much as the one actually built at Astoria (p. 577), the corrected cost of which, including the lining, is $2,650,000 (pp. 1645-6). The total real estate investment for duplicating the manufacturing plants may therefore be set down at not over $3,120,000.

A liberal duplication figure would therefore be

$5,660,125, or about $6,325,310 less than the value stated in the decree herein.

Original cost. An attempt was made by Mr. Yalden, the accountant of the Gilbert committee of 1885, to ascertain the original cost of the property of the six consolidating companies. This was partially unsuccessful as to the properties in general, but practically complete as to the land, except as to the Knickerbocker company, whose books were even then missing. A computation was also made in this proceeding by Marwick, Mitchell & Co., accountants, but is based on insufficient data. Complainant made no attempt to supply the information, although it could probably have been easily done, as the true consideration was generally stated in early deeds. The Master ruled that the burden of proof was upon the defendants (p. 167).

The land conveyed to complainant by the New York Gas Light Company is described at pages 4868-71, 5877-8, and the state of the real estate investment account of the old company for each year from 1824 to 1884 is to be found in Mr. Yalden's report at pages 5661-3. There was a considerable reduction in the account in 1840, but there is no indication of any policy of writing off actual assets. Hence the reduction may be assumed to mean a sale of property. There was a gradual reduction, totaling about $27,500 from 1842 to 1847, but here again there is nothing indicating a policy of writing off. There was a good deal written off the value of the plant in 1850-2, and again in 1863-70; but nothing written off the value of the real estate. Marwick, Mitchell & Co. report, however, that during this early period

there was written off in depreciation the sum of $66,803.67 which is to be added to the $366,500 at which the account stood in 1870 (p. 5873). In the following year an arbitrary appreciation was written up as part of the plan of increasing the nominal capital to $4,000,000, when the company was reorganized (see pp. 4856, 5654, 5662, 5667, 5670, 6329-30). In 1882-3 $20,000 more real estate investment was made (p. 5663), bringing the genuine amount up to $453,303.77 (p. 5873). Of this sum about $182,000 represent additions after 1860 (pp. 5662-3), although all of the present land, including the water right, then already had been acquired (pp. 6328-9). So far as appears, the works were still on the original site, purchased in 1824 at an expense of about $18,000 (p. 5661), the $453,303.77 representing partly bulkhead, partly grading and filling, partly old buildings which may now no longer exist, and partly value now duplicated under the heading of "plant." We shall assume it, however, as a maximum figure.

The land conveyed to complainant by the Manhattan Gas Light Company is described at pages 4871-5, 5874-5, and the cost is given in Mr. Yalden's report at pages 5624-8. No depreciation was ever written off. The trifling sum referred to by the Master at page 269 as representing "depreciation marked down by the Manhattan company" was off "buildings and improvements," which column seems to have included part of what is now called "plant" (p. 5624). It probably was upon property since condemned and not entering into the present calculation (compare pp. 5554, 5564). (*a*) The cost of the "East River property," now called the "14th Street property," is put

down at $367,495.* The buildings left in 1884 on this parcel, exclusive of "plant" were stables then appraised at $6413 (p. 4935). The office building, sheds, walls, etc., are embraced in the "plant" (pp. 1314-17). (*b*) The cost of the "North River property", now called the "18th street property", is put down at $473,173.51. Part of this has however since been condemned by the city, and taken, and does not enter into the present calculation. The part thus taken is now valued by complainant at $1,392,500 (p. 156), and the Master disallowed another parcel of $400,000 (p. 165). The rest is valued by the Master, who substantially adopts complainant's figures, at $1,270,000 (p. 160). As complainant does not tell us how much of the original purchase price represents the real property now capitalizable, we can best approximate it by taking the ratio of $1,270,000 to $3,062,500. The figure thus obtained is less than $197,000. We have a description of the buildings on this parcel in 1884 at pages 4925-30, and of those still remaining there at pages 517-18. The only ones to be found upon both lists, and not belonging to the "plant", are the stables, appraised in 1884 at $10,552 (p. 4930). The Irving Place parcel with the buildings and improvements cost $90,203.94 (p. 5625). The total cost of the Manhattan real estate was therefore greatly overstated by Marwick, Mitchell & Co., who included much of the plant in their figures. It should be put at $671,663.94.

* Mr. Yalden includes the bulkheads in his statements of cost of real estate. This appears from the deed of the bulkhead from 15th to 16th street with other property, bought in 1856 for $125,000, which entire amount is set down in the "cost" column. The deeds conveying the bulkheads are at pp. 6009, 6012, 6015-16.

The land conveyed to the complainant by the Metropolitan Gas Light Company, including bulkheads, is described at pages 4880-6, 5879-80, and the cost is given in Mr. Yalden's report at pages 5679-82. Excluding the New Jersey property, which is not involved in this case, it was $848,601.36.

The land conveyed to the complainant by the Harlem Gas Light Company is described at pages 4877-80, 5877, and the cost is given in Mr. Yalden's report at pages 5710-11, amounting to $158,899.81. A piece was sold to the city in 1875 for over $23,000 (p. 5873), but its original cost does not appear, and as it may have been very small we make no deduction. The bulkhead in the case of this Company is not included in the real estate account, but as a part of the plant. It was built after 1870 (see pp. 4878-9), and was valued in 1884 at $100,000 (p. 5014). The valuation of this company was especially questioned (p. 6525); but assuming that it cost that amount, the real estate may be put down at $258,899.81. The office building is regarded as part of the plant (pp. 1337-8).

The land conveyed to the complainant by the Municipal Gas Light Company is described at pages 4875-6, 5876. Mr. Yalden does not give the cost of the real estate. Its book value was $561,462.83, which seems to have included the bulkhead (p. 5698). There is nothing to indicate that this is not a full, or more than full, figure.

The land conveyed to the complainant by the Knickerbocker Gas Light Company is described at pages 4876, 5876. Mr. Yalden was unable to state its cost or book value as the books of the

company had already been lost (p. 4465). The real estate was appraised in 1875 by the President and Secretary and by one of the principal creditors of the old Union Gas Light Company at from $150,000 to $200,000. This apparently includes the bulkhead, which appears to have been then already built, although not yet fully protected by filling in (pp. 3544, 3546, 3547-8). Precisely in what way the property passed to the Knickerbocker Company does not appear, but it seems to have been through a foreclosure or judgment sale at or about the time when the other assets were sold to that company for the sum of $1,000 (pp. 5108-14). The bulkheads, piers and water rights were afterwards turned over to complainant at an estimated valuation of $115,000 (p. 5697). It would appear from the above facts that a liberal estimate of original cost would be $250,000.

The original cost of the real estate purchased in 1884 by complainant from the original companies may therefore be estimated as follows:

New York Gas Light Co.....	$453,303.77
Manhattan Gas Light Co....	671,663.94
Metropolitan Gas Light Co....	848,601.36
Harlem Gas Light Co.....	258,899.81
Municipal Gas Light Co.....	561,462.83
Knickerbocker Gas Light Co..	250,000
	$3,043,931.71

There may be further items that should be allowed if complainant supplied us with better information, but they would be small, and undoubtedly with all the evidence attainable, especially from the consideration clauses of the old deeds, the total would be greatly reduced.

After the consolidation the present company purchased various properties at a total cost (after deducting a parcel in New Jersey) of $651,396.18 (p. 5880). It is also credited by Marwick Mitchell & Co. with certain real estate expenditures, some of which are doubtless proper for the present purpose; but no such item appears in the testimony as the "New Shop, 66th St." (see pp. 5559, 1147, 1282). It would seem to be something subsequently taken down. The nature of the "Sundry Expenditures" allowed by these accountants does not appear, but allowing everything but the "New Shop" and deducting the item of "Assessments Recovered" (p. 5880) we reach a net amount representing cost of "real estate" since 1884 of $1,271,626.61. On the other hand, four parcels of land have been sold by the company (pp. 5874-5, 5877, 5878, 5879-80). (*a*) The first of these sales was of a part of the plot bought in 1855 for $92,000 (see pp. 5553, 6012-14). The part sold consisted of one half of the forty street lots marked on the map opposite page 6014. The other half were retained, together with the four corner lots and the fourteen other avenue lots. Reference to the tabulation at page 5874 will show that the proportion of the 1855 cost price represented by the lots sold was as $130,000 to $403,000. Hence the cost of the lots sold was about $30,000. (*b*) The appraised value in 1884 of the lots sold out of the Harlem parcel was over 12% of the total land and bulkhead value (p. 5877) so that its original cost was over $31,068. (*c*) The appraised value in 1884 of the bulkhead and appurtenant rights, partly transferred to the city out of the New York company's parcel, was over one eighth of the total real estate

value (p. 5879) so that its original cost was over $57,912. The bulkhead itself was taken away (pp. 2278, 4432) which is regarded as a great injury by the company's engineer (p. 647). It would therefore be fair to deduct $50,000 for this transaction. (*d*) The portion sold out of the 62d St. parcel was over 52½% of its 1884 appraised value (pp. 5879-80). The parcel originally cost $212,993.14 (p. 5679). The part sold therefore originally cost over $111,670.

Substracting the total estimated cost of these four parcels, or $222,758, from the real estate expenditures since 1884, the net addition in cost since that date is $1,048,868.61.

A further deduction must be made, because the court has disallowed certain items included in the Master's valuation, namely, the "land leased," "land vacant" and "land unimproved" (see pp. 161-4, 165-6, 394). The record is obscure as to the details of this deduction, but an approximate figure can be reached by the method above used. The deduction lowered the Master's figure from $13,861,000 to $11,985,435, taking off $1,875,565, or 13.53%. A sufficiently close approximation to the original cost of the "real estate" for the purposes of this appeal is therefore made by the following table:

Purchases before 1884 ...	$3,043,931.71
Purchases since 1884	1,048,868.61
	$4,092,800.32
Deduct 13.53%, or	553,755.84
Cost of "real estate" ...	$3,539,044.48

The "unearned increment" which has been allowed by the court is therefore about $8,446,000.

The Master's basis of valuation.—As to bulkhead values the Master closely followed Mr. Greene (pp. 158, 160) and as to other values Mr. Preiss (pp. 422-3). There is a radical difference in character between the bulkheads and the other properties. The former can be sold as they are and bring nearly or quite full value for land and improvements. The latter can be sold only if the plant be scrapped, and the improvements are as likely to diminish the price as to increase it.

Mr. Greene's method was, in the absence of other indications of value, to estimate the rental value of the bulkhead and capitalize that at five per cent. (pp. 1257, 1263, 1265, 1267, 1270, 1272-4).

Mr. Preiss states his basis of valuation as follows (pp. 1295-8):

> Q. Your valuation of the land is what the land would be worth if those buildings were removed? A. The land value without any buildings on.
>
> Q. How much does this building on there depreciate the value of the land as it stands to-day? A. That I cannot tell you, because I do not know the value of the buildings.
>
> Q. I know; but if you valued these as lots, you would have to remove the buildings? A. Yes.
>
> Q. To get what they would be worth without any buildings on them? A. In that case you would have to give a much higher figure probably. I give you the value as it is to-day, provided possession of the land is given. What you do with the buildings—that is a matter that does not enter into my calculations at all.

Q. You are valuing what the vacant plot of ground would be worth in that particular locality? A. This block of ground would be worth in this locality, yes.

Q. Without any buildings on? A. Without any buildings on.

Q. Now, if they were to sell them, in their present condition, they would have to pay something for taking away these buildings, would they not? A. They might use the material. *There is nobody else that would buy these buildings.* That is a matter that I cannot judge about, what they would do with the buildings in that case.

Q. I am asking, what would be the effect on the land having those buildings on there? A. It would be worth just as much to-day as it is, because nobody will buy the land with the buildings on. They would buy the land for the purpose of improving, and not with the gas houses on.

Q. Therefore, for the purposes of sale those gas houses on there are a detriment, are they not? A. The gas houses are a detriment, certainly.

* * * * * * *

[p. 1297] "Q. Then you have not valued, as you have just testified, the land as it would be with the buildings all removed? A. I have, but conditionally. For instance, if a man were to come and buy that whole plot to-day and the gas houses were to be removed, my figures would be altogether too low, but if a man would come along and buy only a portion, not objecting to the presence of the gas houses, or what might be left of them, then my figures are correct.

Q. Then, as I understand it, your figures are based on a partial removal of the plant and with the gas plant in operation? A. To some extent, yes, sir.

Q. And it is not the value of the land with the building entirely removed, as you have

testified here a few moments ago? A. It is, conditionally, but not simultaneously, not the whole block.

Q. As I understand it, your value of the land is a progressive one; as the buildings are torn down your value attaches, and when the buildings are all removed then there would be a still greater value? A. There would be on account of the whole neighborhood being benefited and attaining an entirely different character. * * * [p. 1298]. I believe that you could get 15 per cent. at least more for the property."

Mr. Wheelock, complainant's other real estate expert, also testified he was "only concerned in the land alone," and was valuing it at "what it would sell for as vacant land to-day" (p. 1154). Mr. Bradley, its chief engineer, also testified to the worthlessness of the plant as an increment in value to the land (p. 1703), saying in defense to his valuations in reports to the tax officers (pp. 1719-20)——

"I know perfectly well that a block of ground with a gas holder on it is worth less than it would be with the gas holder not on it, because whoever purchases it would have to remove the gas holder.

Q. If it has a gas manufacturing plant on it, anyone who purchases it will have to remove that, won't he? A. Exactly.

Q. And so to that extent, you think the existence of the plant depreciates the value of the real estate? A. Within certain limits.

Q. What limits would you say? A. I suppose the assessed valuation would be less; the actual valuation might be the same.

Q. Well, then you mean that the existence of a gas plant on property is valued at a depreciating factor for taxation purposes? A. Yes, sir.

Q. But not for any other purposes? A. Not for any other purposes; that is what I gathered from the counsel's instructions.

Q. And what counsel was it that advised you? A. The general counsel of the company.

Q. Mr. Sterling? A. Mr. Sterling."

So Mr. Carter, complainant's secretary, testified that its tax report was (p. 1243)——

"A. Made up on the theory that the property of the company occupied by its gas plants sold under ordinary circumstances would practically bring nothing more than the value of the land. It is pretty well established by our own experience and by other people who have occasion to sell property of that sort.

Mr. Burr.—I move to strike that out.

The Master.—Strike it out.

Mr. Mathewson.—Cannot that stand? Isn't that fair to state our experience?"

Thus it will be perceived that the Master has valued the land at a sum which is only sustained by the evidence if he gives no value to the plants; yet he gives the plants their full value.

The Master's figures.—Contrary to what we contend to be the rule of this court, the Master treated the case as if it were to be tried *de novo*, as if the state had never passed on the matter at all, and therfore followed the witnesses who impressed him the more favorably, although all the witnesses on both sides were qualified experts and none of them were impeached. The court considered the burden to be as usual upon the side excepting to the Master's report, thus allowing

him to outweigh the legislature (p. 391). The difference in valuation between the two parties was about $3,200,000 (p. 157). The question involved is an important one. Our contention being that in such a case the action of the state is conclusive unless the proof to the contrary is so strong that failure to find in accordance therewith would afford a presumption of unfair-mindedness in the tribunal to which the decision is confided, we shall discuss briefly the grounds upon which the Master states that his decision was based, believing that we can show him to have read the testimony with rather slight care.

We take up first the grounds stated at the top of page 158.

Standing and Qualifications of the Various Witnesses.—Complainant's witnesses were Messrs. Wheelock, Greene and Preiss. The City's were Messrs. Thompson and McHale. The State's was Mr. Wells.

Wheelock. His qualifications are stated at pages 1136-8, 1171-4. He was thirty years old, and had been in the real estate business over eight years, of which about five years were spent in work such as would qualify him for testifying. During these five years he had had valuable experience, being an employee and afterwards a director of one of the most important real estate concerns in the city. He had been a commissioner in a number of condemnation proceedings, and had acted for many of the most influential and powerful interests. He was testifying for a fee yet to be fixed (p. 1195).

Greene. He was a civil engineer, called to prove waterfront values only. He had been Chief

Engineer of the Dock Department of the old city from 1875 until 1898, and as such in constant conference with the Commissioners of Docks in fixing rentals. This was his only experience, but he had also been called to testify in other cases as to waterfront values, and this was his only direct experience, but he had "some knowledge of the very few sales there are" of such property (pp. 1248-9, 1252-3, 1273).

Preiss. He is spoken of by the Master as "a real estate dealer and appraiser of many years' experience," in contradistinction to the City's witnesses, who are treated as persons of less experience outside of judicial proceedings (p. 158). He was sixty-five years old, and had had thirty-nine years' experience. He describes his own business as "Buying and selling, exchanging, appraising, procuring loans, testifying in courts and before Referees" (p. 1275). Being asked to specify, however, he disclosed no buying, selling or exchanging (pp. 1275-6):

> "Q. Will you state some of the clients for whom you have acted in appraising real estate, or purchasing or selling? A. I have been and still am employed by the elevated railroad companies and *have testified for them in about four hundred and sixty cases* on the different lines, and especially on the easterly lines, Third Avenue, Second Avenue, First Avenue, 23rd Street, 34th Street and 42nd Street. I have been employed very extensively by the New York Central & Hudson River Railroad in appraising all their holdings on Manhattan Island—I have the papers here—for the purpose of testing the tax assessments; went over that twice. All of their property on the westerly side. I have here the map.

Q. We do not care for the map, just give the names? A. Then I have been testifying in insurance proceedings for the New York Life Insurance Company; I have been testifying and also appraising property for the Ayer Estate in Boston. I have been appraising and testifying for the New York Edison Company, their holdings in the city; in condemnation proceedings of the Bellevue Hospital site, and extension; condemnation proceedings for the Chanler Estate, 14th to 15th street, between 10th Avenue and the river. I have been appraising for John Pierpont Morgan; I have been appraising for different members of the Jay Gould family, in a variety of instances.

Q. And for the Gould Estate? A. Yes."

His own counsel dropped the matter here, but it was taken up again on cross examination (p. 1284):

"Q. I understand you to say that you have appraised real estate for purposes of testimony five hundred times? A. Yes, sir.

Q. And four hundred and sixty of those were in elevated railroad cases? A. Well, I am permitted to tell you, I have appraised and testified on Fourth Avenue for the New York Central and Harlem Railroad Company and the elevated, I put them altogether, as a rough guess, perhaps it is not five hundred and not five hundred and fifty; it would be between that, between five hundred and six hundred anyway, five hundred and fifty at least."

and again (pp. 1286-7):

"Q. How many years since you sold property on Third Avenue? A. That I cannot tell you. It may be ten years and fifteen

years that I have not sold anything on Third Avenue in that section. Most of my time has been taken up *with all this*, and I am all alone.

Q. Most of your time has been taken up in preparing these books that you have prepared? A. Well, how could I prepare my cases and get through with it *for fourteen years* if I didn't get posted? It is pretty hard work to be posted.

* * * * * * *

Q. I understand from your testimony that for the last ten or fourteen years your business has been that of an appraiser rather than as a broker? A. No, well, I have been selling property whenever I had the time to do it.

Q. Your time has been so engaged in making appraisals that you have not had much time to sell? A. I have not been extensively engaged in selling property for the last few years, that is true. *I have not had the physical time to do it.*"

Thompson. He was forty-two years old and had been in the real estate business in New York for fourteen years, coming from Nashville. His work had been about equally divided between appraisements and actual transactions. He had bought and sold property all over the island (pp. 2176-7). He had been retained by the city as expert in many important cases, including *certiorari* cases (p. 2163); and had also appraised for many large estates and corporations which he named (pp. 2163-4). He was retained also in over three hundred *certiorari* cases on the other side, to contest assessments (p. 2189). Among these were a number for this complainant, the Consolidated Gas Company, concerning property here under

consideration. In all of these he was retained to appraise, report and testify. He had reported his appraisements to the complainant, and had actually testified on its behalf in half or two-thirds of the cases, testifying for it, indeed, to lower values than are now given by him, as there has been an increase in value meanwhile (pp. 2216-20). The cross-examining counsel seemed to think that there was something inconsistent in his testifying a second time to the truth of his appraisements, after the interests of the respective parties had been reversed; that consistency would require him to follow the custom of complainant's officers, and have two sets of valuations. The Master does not advert to this, and it seems to us on the contrary that an expert should feel bound in duty to testify the second time under such circumstances, when called upon by the other party to do so.

McHale. He is concededly considered to be a competent expert (pp. 3993-4). He is the superintendent of real estate of the United States Mortgage and Trust Company, appraising property to be sold by it as trustee and looking after its loans, leases, etc. He has been twenty-one years in the real estate business in New York City, and is an appraiser, but not a broker. He gives a partial list of his clients (pp. 2221-2). Like Mr. Thompson, he had appraised and testified for this complainant in its *certiorari* proceedings concerning property here under consideration. In some he had advised a discontinuance of the proceedings. In some his present figures were very much higher than those which he had given to the company on the appraisement (pp. 2234, 2247-9, 2251-

2). He was not cross examined upon his qualifications.

Wells. He had been a real estate auctioneer, broker and appraiser in New York City for thirty-three years. He had been a member of the Board of Taxation and Assessment for nearly three years under Mayor Strong, and its president for two years under Mayor Low (pp. 3066-7, 3127). The Master refers to him as not engaged in as extensive current transactions as those in which Wheelock was engaged; but this simply means that the state's counsel made no attempt to have him enumerate his clients on the direct, and that complainant's counsel considered it wise not to cross-examine upon his qualifications. Quite possibly he could not have enumerated as many extensive current transactions as Wheelock. A clerk of thirty in a large corporation law office is often engaged in more extensive current cases than a leader of the bar at sixty.

Degree of care devoted to their investigations and familiarity with general real estate conditions. —These phrases of the Master at the top of page 158 are partially particularized by the following remark on the same page concerning Messrs. Thompson and McHale, the city's experts:

> "Their cross-examination disclosed numerous instances in which they disclaimed knowledge of *actual sales* in the immediate vicinity of the parcel under consideration, *notwithstanding such sales were matters of public record.*"

and by the following remarks at pages 158-9 in discussing the evidence of Mr. Wells, the state's expert:

"Like the other witnesses called by Defendants, he was not familiar in many instances with recent sales of property in the immediate neighborhood of the particular parcel under consideration."

The italicized clauses in the first of these passages show that it was intended to refer, as to Mr. Thompson, to his alleged failure to bring with him to the trial any memoranda of certain sales claimed by complainant's counsel to be material. At pages 3990-2 a list of these sales is read to Wheelock, who answers that they were reported in the *Record and Guide* or *City Record*, as the case may be. As these pages read, they certainly look black for Thompson. Referring back to Thompson's testimony, the blackness fades out.

Premising, it is to be noted that all of the questions asked of Wheelock might have been objected to, and upon citation of authority would doubtless have been excluded, for the prices and circumstances of the sales of properties not in suit raise collateral issues, and can be asked about only upon cross-examination (Kerr *v.* South Park Commissioners, 117 U. S. 379; Matter of Thompson, 127 N. Y. 463; Jamieson *v.* Kings Co. El. Ry. Co. 144 N Y. 322). Witnesses, however, are often cross-examined about sales of particular pieces of neighboring property, although they cannot be asked about them by their own counsel if the opposing counsel is alert, and hence they generally take to court with them memoranda of the transactions upon which they have based their appraisements, and of those which they anticipate will be relied upon by the other party. Such an expert as those produced by the defendants keeps a set of real estate maps on which his

clerks mark down every reported or known sale, with the prices when ascertainable (the latter being a minority, as the considerations stated in deeds are now generally either nominal or fictitious). When retained to appraise a piece of property he examines it, and also goes over the recent transactions in the neighborhood as shown upon his maps. When called to testify, he directs his clerks as to what class of transactions shall be transcribed for him to carry along.

Complainant's counsel at pages 3990-2 represents Mr. Thompson as having had no record of any one of seven different sales reported in the publications mentioned. Reference to his testimony fails to disclose any reference to first and fifth of these transactions. The second, a sale six years old, he had at his office, but had not brought it along. The third was missed by the fault of the examining counsel himself, who named the wrong street. The fourth the witness had considered, although he could not recall the price while upon the stand. The sixth related to a sale of two lots in 1901 at $8,000 each. He had brought along a note that one of them had sold in 1900 and again in 1901, and that the former sale was for $8,000. He regarded the sales as irrelevant, for reasons stated by him. Of the seventh he had no memorandum. It was a sale of an inside avenue lot at $10,000. Its bearing was upon an adjacent avenue lot of similar character. This he had appraised at $10,000, *and both of complainant's experts had already testified to the same figure about it* (pp. 1166, 1305, 2210, 3992). Is there any reason why he should have brought any memoranda to sustain this particular appraisement?

As to the other transactions about which Mr. Thompson is stated by complainant's counsel at pages 3990-2 to have been questioned, he had a note of the first. The second he was not asked about, because counsel had the wrong figure on his notes (compare pp. 2771, 3137). The third and fourth were not publicly known, and counsel learned of them through confidential information of Wheelock's.

Mr. McHale was asked about no particular transactions except with relation to bulkhead property. He testified that the sales of this class of property were so few, and the circumstances surrounding each sale so peculiar, that he did not base his testimony upon them or consider them of any value, and showed but moderate ability to state from memory the exact figures, but based it on capitalizing rentals (pp. 2260, 2269). He thus took the same course as complainant's expert Greene. He was extensively cross-examined as to sales of particular pieces of property, and also about a class of transactions upon which complainant for obvious reasons (as they carry generally large figures) much relied upon, but which are not universally respected, namely, awards of commissioners in condemnation proceedings instituted by the city. Complainants made a particular point of one of these, namely, a supposed award of $900 per foot for a bulkhead at 22nd street. The nearest property here in question is at 42nd street, a mile away. Mr. Greene thought such an award had been made (pp. 1254-5). Mr. McHale did not know of it and doubted it, but thought it too far away to be important (p. 2261). Mr. Thompson denied the fact of the award, having

searched the record and been unable to find it (pp. 2280-1, 4011). He also said that it would not modify his opinion if it had been made, as the property could not be made to pay on that basis (p. 2601). Mr. Wheelock testified that such an award had been made (p. 3987), thus making a conflict of testimony. The best evidence was not produced. Is the Master justified in condemning the city's witnesses for not searching independently for a paper which both of them thought immaterial, whose existence is not proved, and which if it existed was a matter of record in the office of their own counsel, so that they had a right to rely on him to inform them about it?

Taking up now the case of Mr. Wells, he is stated in five questions at pages 3990-2 to have been unable to find upon the notes that he had brought with him to the trial any record of certain transactions reported by the *Record and Guide*. His testimony fails to disclose any reference to the transactions mentioned in the first, third or fourth question. The fifth related to a portion of the city, his notes of which he did not bring with him to the trial. As to the second, the facts were as follows: The property as to which he was testifying consisted of inside lots on 20th, 21st, and 22nd streets. He gave values of $7,500 per lot, based partly on a sale of 426 East 19th street in 1905 and a sale of 508-10 East 19th street in 1906. The sale which he did not bring with him was an earlier and therefore less important one, of 436-8 East 19th street in 1904, for $8,050 a lot. He had had the sales of 1904, 1905 and 1906 culled out of the records, but this one had failed to be noted (pp. 3140-1).

As to the other transactions about which Mr.

Wells is stated by the examining counsel to have been questioned, the first, second and fourth he had, but correctly said that the reported price was nominal. As to the third he was not asked. It does not appear that the fifth, in which Wheelock was concerned as broker, was publicly known.

Whether complainant's witnesses would have had a larger proportion of transactions at their tongues' ends if cross-examined on this line, nobody can tell. They were not put to the test. Quite possibly they would have had their ammunition nearer at hand. Cross-examinations of this kind are more valuable as exhibitions of skill by counsel than for elucidation of the issue. It is more a test of preparation by counsel than of preparation by witnesses; but a first-class real estate appraiser, whose judgment is highly relied upon by dealers, seldom cuts as brilliant a figure in expounding theories by use of collateral transactions on the witness stand as that cut by a professional witness like Preiss or a capable and active young assistant like Wheelock.

Demeanor Under Cross-examination.—This is a thing which is not apparent on the record. The remark has been attributed to the late Mr. Justice Blatchford that in print all witnesses are six feet high. But within this court's rulings as to the burden of proof, can a state statute be declared unconstitutional upon a Master's report as to the impression made upon him by the demeanor of paid experts?

Assessed Valuations.—Having already, and properly, excluded these from evidence (pp. 31-3, *supra*), the Master actually used them in making

up his report, and to the extent of discrediting the city's witnesses because "in a dozen or more instances their valuations approximated, or were substantially below," the assessment (p. 158). Yet these very assessments were being contested by complainant, who had retained these very witnesses to testify that they were too high, having first itself, upon oath of its Vice-President, filed petitions to that effect (p. 32, *supra*). Yet the city charter requires the assessments to be at full value (pp. 4918-19), and complainant is here complaining that the public authorities do not treat it fairly.

Plottage.—The Master also discredits the defendants' witnesses because they hold a different theory from complainant's, which he considers to be the proper and prevailing one as to "plottage" (p. 159). Perhaps upon this point it is sufficient to say that one of the most experienced and skilled judges of the state Supreme Court has since decided that the complainant's theory of plottage was wrong (Matter of City of New York, 56 N. Y. Misc., 306, 310).

Plant.

This term includes the manufacturing and distributing system, except the mains, services and meters.

Book value.—This also is based upon the appraisement of 1884, with subsequent variations which we shall describe when we come to state the facts as to Repairs, Renewals and Depreciation. It was thus increased from $12,182,491.41 in 1884 to $16,087,428.72 on October 31, 1905

(complainant's Exhibit 79, p. 5032), and $16,319,811.69 on June 30, 1906 (p. 754).

Tax reports.—Complainant's valuations of its plant in its verified reports to the public authorities, and its explanations thereof on various occasions, are as follows:

On May 17, 1904, nearly a year before the investigation by the Stevens committee, Secretary Carter presented to the Corporation Counsel a statement giving the total valuation of the gas works excepting street mains at $8,593,694.54 (p. 1033). He was examined upon this figure in connection with an application for revision of the taxes of the complainant, and testified as follows (pp. 1034-5):

> "Q. What does that represent? A. The valuation placed upon the plant by the Chief Engineer.
>
> Q. Who is he? A. Mr. William H. Bradley.
>
> Q. Is this supposed to include all your machinery or gas tanks, everything which constitutes the plant for the manufacture and transmission of gas? A. Yes, except the mains.
>
> Q. Everything except the mains? A. Except the mains and what would be classified as personal property."

On November 30, 1904, complainant filed according to law its written report to the State Board of Tax Commissioners. This report was verified under oath by the same gentleman as follows (p. 5074):

> "R. A. Carter, Secretary of the Consolidated Gas Co. of N. Y., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and rec-

ords of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1904, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief."

The prescribed form contains a schedule headed "Schedule D, Statement of Assets and Liabilities, June 30, 1904." The first item entered herein is "Real Estate and Plant $19,673,075.42" (p. 5068).* Mr. Carter was examined the following spring about this item by Mr. Hughes, counsel to the Stevens committee, and testified as follows (pp. 859-61; we omit what did not form part of the Hughes examination).

"Q. Will you please take the item in that report, the first item of real estate and plant, $19,673,075.42. Now, that is a statement of the value of the real estate and plant of the Consolidated Gas Company to June 30, 1904, is it not? A. That is exactly what it is.

Q. That is exactly what it is? [A.] As near as we could determine.

Q. That is what I am asking you? A. That was the value of the property at that time.

Q. That's it exactly. In other words when you came to make up the report to the State Commissioners for the year ending June 30th, 1904, you sought to ascertain fairly what the value of the property of the company was? A. Precisely.

Q. And you took the various properties of the companies with which you were familiar and you fixed what you decided to be the fair value of the properties and stated these values in your report? A. Precisely.

* The plant valuation included herein is $8,456,595.71 (p. 5276).

Q. And under the head of Real Estate and Plant you put down the figures $19,673,075.-42 as the value of the real estate and plant of the company? A. Yes, sir.

Q. Before you get to that as suggested, is that the value that was arrived at after consideration of the matters by others besides yourself? A. That is the case, Mr. Hughes.

Q. And with whom did you advise in making the determination of value? A. The engineers of the company.

Q. Who were they? A. Mr. Bradley and Mr. Woods.

Q. And who else? A. The Assistant Secretary who has charge of the distributing system of the company.

Q. Who was that? A. Mr. Simpson, Mr. C. C. Simpson.

Q. Anybody else? A. I think if we were in doubt I would have consulted with the President from time to time with regard to the figures that went into these reports.

Q. Yes, sir, and probably with other counsel? A. Probably—always—always with counsel. Reports are always submitted to counsel and fully approved before being filed.

Q. You sought in this way to get from all persons connected with the company who had expert information as to the value of the property what would be a proper valuation thereof on that day? A. Yes, sir.

Q. And the amounts which are stated in this Schedule B that you have before you, and that report of 1904, were those arrived at and stated? A. Yes, sir.

Q. And with the concurrent judgment of these various men familiar with the facts? A. Yes, sir.

Q. Taking then the first item of real estate and plant $19,673,075.42, and taking that as the value thus arrived at of the real estate and plant, state whether or not that covered

all the real estate and plant of the company; that is to say, the land, the buildings thereon, and stoves, the holders and various apparatus which are connected with your business of gas making and apart from the items which are separately mentioned later on, such as mains and services and meters, stoves and personal property; is that correct? A. That is correct."

The assets contained in Schedule D aforesaid, after deducting the items representing Bonds, Obligations and Stocks of other companies, Accounts and Bills Receivable, Cash on Hand, Unclaimed Dividends, Metropolitan Fund, and Contracts, Rights, etc., foots up $27,298,576.50, and Mr. Carter was further examined by Mr. Hughes about this total (pp. 1007-17). The witness stated that Schedule D purported to be "a statement of the assets and liabilities at their actual value as nearly as we could ascertain it," and further testified on examination by Mr. Hughes as follows (pp. 1014, 1016):

"Q. * * * I am anxious, however, to ascertain, and I believe you have testified that the figures in there are the values on June 30, 1904, of that property. Is that not so? A. That is true.

Q. That is true? A. Yes, that is the value, as we estimate it."

* * * * * * * * *

[p. 1016] "Q. It was what you believed it to be worth? A. Yes, sir.

Q. That is what we mean by value, is it not? A. Practically.

Q. What we mean by actual value? A. I only want to make it very plain, Mr. Hughes.

Q. When you were trying to make up this statement, in consulting the other gentlemen

who knew about the matter your effort was to make a statement of the actual value, was it not? A. Yes, sir.

Q. And you believed that was the statement? A. We believed that, sir.

Q. And that statement of the real estate and the plant—— A. Always.

Q. The meters and services and everything outside of the cash assets and securities foots up $27,289,576? A. Yes, cost of reproduction, less depreciation."

Further explaining, the witness drew a distinction between "estimated actual value" and "worth", the latter including "its use, application, good-will of the people with whom the company was doing business, its relation with the public. That would contribute somewhat to its worth, but that would not figure in its value on the basis of cost of reproduction, less depreciation. * * * Those figures you are showing amounting there to $27,000,000, represented our estimated value of this plant on the basis of the cost of reproduction less depreciation" (p. 1017. In this last sentence the word "plant" is used as including also the real estate, mains and services, material and supplies, meters, stoves and other personal property. See Schedule D, p. 5068).

After the report of the Stevens committee, on the following November 30, complainant filed its next annual report, likewise verified under oath by Mr. Carter with the same form of verification (p. 5063). The figure given for Real Estate and Plant in the same schedule was $19,678,612.76 (p. 5057).

This report was filed after the proceeding before the Gas Commission had already commenced (see p. 5). In his testimony before the commis-

sion Mr. Carter testified that his memory had been refreshed by talking to Mr. Bradley, and that he had obtained this valuation by "taking one-half of the value of the plant as representing the value of the holders, plus some scrap value of the plant which would be dismantled in connection with the removal of the [*sic*] Astoria" (p. 1036). The president and Mr. Woods were not called, but Mr. Bradley, being recalled on behalf of the company, testified as follows (p. 1702):

> "A. Mr. Carter applied to me for a figure, and I took advice with our general counsel on the subject and was informed as to what the law was in the case. Acting upon that advice I simply cut the book value in half and added to that—the absolute figure I cannot give you; I have not got them—but I added to that, if my recollection serves me, between $600,000 and $700,000 as the scrap value of the plants to be dismantled, understanding that we were going on with our Astoria business and that within a very short time practically the works would be dismantled and simply scrapped, as we had no market for them. The resulting figure from that, half of the book value and the six or seven hundred thousand dollars that I added, was the figure that Mr. Carter used in the tax report."

The Master refers to the explanations as "not altogether satisfactory," and (disregarding Mr. Carter's oral testimony on the Hughes' examination) says that tax reports "are, in the case of large corporations, ordinarily prepared by counsel" and "in the nature of pleadings, and are so drawn as to support the theory on which it is hoped to secure the most favorable results" (which in the case of large corporations, in the

Master's opinion, apparently permits their being disregarded where they would not lead to the results aforesaid), and he adds "Under these circumstances, when, as in the present case, it appears that taxes are being constantly contested, it must very commonly occur that views are expressed on behalf of the corporation more or less inconsistent with the valuations it would put upon its property for purposes of sale, condemnation or such an action as the present" (p. 216).

He therefore brushes these admissions aside as "of no particular value as evidence", because on his theory the valuation of the plant is to be "its structural value" (p. 216); and he thinks that the state violated constitutional rights by allowing for the depreciation which the complainant itself has continued to claim in its tax reports based upon an intended early removal to Astoria and consequent early scrapping of the plant.

Value as Real Estate.—Like most manufacturing plants, this plant is conceded to add little or nothing to the cost of the land (see p. 215; also *supra,* pp. 43-6).

Cost of reproduction or duplication.—If the measure of value of the present plant is to be the amount which a rival company would have to pay in order to duplicate complainant's outfit with another equally effective, we have no sufficient information about it. The state took the objection that this should be the point of the inquiry (p. 1515) but the objection was overruled, and complainant proceeded on the same theory as in the case of the land values, as will appear.

We can not take the cost of the new Astoria

plant as a measure, because that is expected to do much better work, by saving by-products and otherwise. While it is more costly per thousand cubic feet of estimated output, there is no present means of estimating the savings to be effected by such matters as "better equipment," the manufacture of cyanogen and other "by-products that have never been recovered by any gas company in this country," the placing of machinery "that is not in any other plant in this country" (Bradley, pp. 579, 642, 1722, 1732) which will make the Astoria plant worth more in proportion to its cost.

The present plants on the other hand, in the language of Chief Engineer Bradley, "are too much cut up into small units that are impractical to be placed on a modern up to date works. Everything is too small" (p. 1718). The coal gas plants have retorts "that are small, they require a great deal of labor, and the use of a great deal more coke under the benches to keep them going than the type of furnace they have in the Bronx" (Wood, p. 2339; Carter, p. 4525). These plants, in Bradley's words, are "out of date and somewhat antiquated" (p. 1732). Their apparatus is not "inefficient; simply comparatively inefficient" (p. 1733). It requires more labor and "brings up the cost of production" (p. 1733). To extend them would be "patchwork" (p. 626). As to the 14th St. station, "Nobody else would want to buy it for a gas manufacturing plant" (p. 1738).

Various figures have been named as representing standard cost of plants per thousand cubic feet of maximum daily output, as $400 per thousand for coal gas and $200 for water gas (Addicks, pp. 1639-40, Bradley, p. 1721), or $340 and

$123 respectively, excluding the holders (Mayer, pp. 1455-6, 1458-9) or 30 cents per thousand cubic feet of annual sales (Humphreys, pp. 1684-5) but these are exploded by actual experience. The capacity of complainant's own works, coal and water gas together, was increased 31,500,000 feet at an expenditure of $5,132,620.41 (p. 1716), or at the rate of less than $165 per unit (and see as to 21st St., pp. 538-9, 1715). It is plain on reflection that there must be a great variance between different works, and that there are many parts of the works that do not vary in expense in the ratio either of daily output or of annual sales.

Original cost. Our assignments of error do not make this question material in relation to the plant.

The Master's basis of valuation. He mainly follows the figures of Mr. Mayer, although Dr. Humphreys makes depreciation greater (pp. 1801-2), and it is therefore important to ascertain the theory upon which they are based.

Mayer testifies on cross-examination as follows (pp. 1347-8):

> "Q. And you computed then that works that produce one million feet are worth so much, and works that produce five million are worth five times as much, is that the way you did it? A. No, sir, I did not.
>
> Q. Well, how did you? What figure did you use as a multiplier? A. I figured on each and every apparatus and each and every connection throughout the entire works, separately, and applied as a factor the particular cost of each apparatus."

And again (pp. 1394, 1396):

"Q. Then, as I understand it, you are not attempting to find the capital of the company that was invested in the plant, but what someone would have to pay if they got you to build them a plant somewhat similar to this to-day, is that it? A. That is the idea exactly, with the exception that it would be *an exact duplicate of the plant as it exists to-day.*

Q. If, however, you were going to build a coal gas plant to-day of a capacity of 9,500,000 cubic feet per day, *would you reproduce this identical plant? A. I would not.*

* * * * * * * *

[p. 1396] Q. I understand that if you were to produce a plant to-day which would produce the results that this plant does, that you would not build this kind of a plant; is that right? A. Not if I were asked to build a plant with the total maximum capacity as it exists to-day.

Q. And you could build such a plant cheaper could you not than the estimate which you have given? A. No, it would cost more, but it would be better. It would include a great many apparatus which these plants do not include.

Q. But your result in the cost of gas produced at that plant would be very much less, wouldn't it? A. Yes."

And again (p. 1460):

"Q. If you were called upon to construct a plant for the use of the Consolidated Gas Company, to-day, would you scatter the works around as they are here? A. No, sir, I certainly would not.

Q. The works divided into five manufacturing stations require a much larger investment in plant, do they not, than it would to

bring them together into one station? A. Decidedly.

Q. And also the cost of operation is very much more in the scattered stations than it would be in the one station? A. Yes, sir.

Mr. Mathewson.—This witness has not operated plants. I don't think he should be asked that."

And again (pp. 1481-2):

"Q. Now, as I understand you, in examining the 14th and 42nd Street plants, for instance, you did not take into consideration whether they were commercially or economically worth replacing, did you? A. No, sir; I only figured on what I found there.

Q. That is what it would cost to reproduce that apparatus, whether or not it was commercially and economically an apparatus that would be built to-day? A. I paid no attention to that whatever.

Q. And did you take into consideration whether gas could be reproduced at those particular plants at $1.50 or 50 cents per thousand cubic feet? A. I did not consider it at all because it had no bearing whatever on the apparatus as I found them.

Q. As you valued it? A. As I valued it.

Q. Now where a plant was of an old type which, owing to the advance in the science of gas engineering, would not be built to-day, did you allow anything for depreciation by reason of that fact? A. No, sir."

And again (pp. 1495-6):

"If I had to build that plant over again new, of course, as I said, I would construct it differently, for the full capacity that it is now. For that particular district where that plant was originally intended to supply gas, the location was very favorable.

Q. Would you say, that taking all these plants together as a whole, they are up to date construction?

A. I have said the other day that if I was to construct them new for full capacity, I would construct upon different lines than those laid out, which is due to the fact that they were built in small units at the time and added to from time to time until they finally reached their present capacity, but if built for the whole capacity the basis of construction would be an entirely different one of course.

* * * * * *

Q. And those circumstances under which they were developed to their present size did not operate to make them up to date construction, did it?

A. Why no, it could not be so, because some of those plants originated away back in the fifties, when the plants as used to-day were not known, and the buildings were arranged for that character of apparatus. In order to change them, as I said before, it would cost tremendously to do it on the present site as compared with a new site.

Q. Is there anything to prevent the company from taking these plants one by one and reconstructing them and bringing them up to date, as far as construction is concerned, and increase the capacity of each one as it is rebuilt?

A. There is no chance for any decided increase in capacity. As I said before, they can be improved with modern apparatus, but it would cost a great deal more to do it on the present site, as compared with a new site."

And on re-direct examination (p. 1504):

"Q. Now, as a matter of fact in your experience, is a plant which has been built up

for the last sixty or eighty years to supply gas, being increased in capacity from time to time as the requirements of the consumers increase, in any instance exactly the same as a new plant which you would install for the full capacity if you were to do it over again to-day?

A. No, sir. If I should build a plant for the full capacity it would be built on different lines.

Q. But where a plant is built up in this way, is it ever possible to get it exactly on the lines as you would produce it to-day?

A. Not at all."

And again on re-direct (p. 1510):

"Q. I finally ask you whether from your observation of these plants, knowing that they have been built up during the last sixty or eighty years, you consider the plants as efficient and in good condition or otherwise?

A. I believe I have already stated that in my testimony. I think that all of the plants that are operated to-day for the manufacture of gas are as perfect as can be made under the conditions under which they were built and developed."

And on re-cross (p. 1512):

"A. I did not examine the operating results at all."

Of course this method did not result in a figure representing what it would cost to build other plants that would produce the same amount of gas and by-products at the same expense, nor have we the material for such a computation. If complainant has the burden of proof, then complainant must suffer for the omission. The point was taken at the close of Mayer's testimony, by motion to strike out (p. 1515).

What value is to be attached to calculations based upon Mr. Mayer's method may be illustrated from the case of the holder cover. In ancient times it was considered necessary to put a gas holder into a building. There is one of these venerable buildings on complainant's property, and it is in very good preservation.

In Rowland's appraisement of 1884 it appears as follows (p. 4928):

"Block No. 2.

West 18th Street, above 10th Avenue, two inclosed gas holders, also well.

1. Gas holder building, 188 x 92, brick, with heavy stone trimmings, extra heavy roof and internal posts, framing, etc. ..... $45,251"

In Mr. Mayer's appraisal of the 18th St. plant we find the following (pp. 1451-2):

> "Brick and brownstone building used as enclosure for holders, $169,328 without depreciation; $155,784 with depreciation.
>
> Q. What do you mean by that, that the holders are put inside of a brownstone front or not?
>
> A. Well, there it is, a large building in which are located two holders as a protection for the holders against snow and inclement weather, and the man that has to go on top of the holder to clean it. *It is an old construction that would not be carried out in these days.*
>
> Q. It is absolutely useless is it?
>
> A. No, it is not absolutely useless. The building is there and contains the holders, and the holders are distributing holders.

Q. Well, I say the building does not serve any purpose. You say a holder will last forever if left exposed to the elements. Then what necessity is there for enclosing it in a brownstone front?

A. *I would not build it to-day, but it was built in the days when they considered it necessary to have a building around it to protect it.*

Mr. Mathewson.—And it is not necessarily a brownstone front, Senator?

Mr. Page.—He says it is a brownstone front.

The Witness.— No, brownstone — brown trimmings around the windows and things like that. In Chicago the holders were enclosed up to the year about 1880, in very large circular buildings, and it has only since 1880 been abondoned; the use of those holders there, and the weather was very severe.

By Mr. Kirby:

Q. They do not enclose holders now where the climate is severe, do they?

A. Yes.

Q. All over the world except in Canada and in England?

A. None enclosed in England and none in Canada.

Q. None in Canada that you know of?

A. Yes.

Q. Old construction?

A. Yes.

Q. No new construction?

A. No, sir.

Mr. Mathewson.—It depends upon the section; there are some sections still using them and erecting them.

By Mr. Page:

Q. If you were erecting this plant, which I understand the company wishes to have valued and for which purpose you have been

retained to testify, as to what you could produce this plant for to-day, you would eliminate this brick and brownstone building from any such estimate, would you not?

A. If I was asked to make a valuation of that now? No, I should not eliminate it because it is there and represents the value that I have given it in my schedule. I have valued everything that I found on the premises that was in actual operation or use."

He had added ten per cent. engineering charge and five per cent. interest on capital pending construction, so that the holder cover was valued at $179,151 (pp. 1332-3, 4660), at least $146,662 of which the Master and court have allowed (see p. 175). On re-direct examination he said (pp. 1507-8):

"Q. You were questioned as to a building at 18th Street enclosing some holders there. Is that form of construction, enclosing holders in a building, in use anywhere to-day?

A. No, I believe it has been universally abandoned, even in severer climates.

Q. Was it formerly a construction that was recognized by engineers?

A. Well, yes, it was used many times. I have constructed some of those buildings myself.

Q. Does not that reduce the cost of taking care of apparatus inside?

A. Yes, sir.

Q. Saving the expense of cleaning snow off the holders and doing various other things?

A. It was not so much the expense entailed in cleaning the holders from snow, but at that time it was considered dangerous or almost an absolute impossibility to clean holders in severe climates as Canada or Chicago from snow during heavy storms. By better

and improved construction of the holder recently we have applied complete stairways extending from the ground level to the top, so any portion of any holder, no matter how large, can be conveniently reached by the men that go on top to shovel off snow."

Thus this obsolete building, on which even Rowland, back in 1884, allowed a very heavy depreciation, is now capitalized against the consumers by the Master at $100,000 more than the amount at which it was put into the owners' capitalization, nearly a quarter of a century before.

We understand that elsewhere, in view of the appreciable, although very slight, convenience afforded by such structures, they have been appraised at cost less ninety-seven per cent. discount.

Of course we have selected the most striking *reductio ad absurdum* of the theory on which the court's decree is based, but there are others.

Mains and Services.

Book Value. This also is based upon the appraisement of 1884, with subsequent variations as in the case of plant. The valuation of the mains was increased from $5,233,962.10 in 1884 to $7,852,151.03 on October 31, 1905. The corresponding valuations of the services are $1,034,241.41 and $1,212,071.09 respectively (Complainant's Exhibit 79, p. 5032).

Tax Reports. Complainant's valuations of its mains and services in its verified reports to the public authorities and its explanations thereof, are as follows:

In Mr. Carter's verified tax report of November 30, 1904, in Schedule K, he gave as "Present value of property in streets, highways, and public places on basis of cost of reproduction (new)" $5,613,-221.12, and as "Present value of property in streets, highways and public places (allowing depreciation)" $4,261,156.39; and in Schedule D, under "Mains and Service", $4,261,156.39 (pp. 5068, 5072). The same figures with a slight increase were repeated in 1905 (pp. 5057, 5061). Carter was examined about this by Mr. Hughes, and testified that the figures were decided upon after conference with the parties who were acquainted with the facts, with his own experience and knowledge of the facts, and that the present value of the pipes, allowing for depreciation, would be $4,261,-156.39 (p. 1009). The explanation given was that he got these figures from Mr. Simpson, the Superintendent of Mains and Services; and the latter testifies they represented the value of the material, taking the cost of laying the pipe under the most favorable conditions, including only the bare cost of material, and the labor for laying in soft dirt streets; ingenuously saying "I did it for taxation purposes, and I thought those were the right kind of conditions to take" (pp. 719-20). Simpson denies however that he gave the estimate for services in the tax report, saying "It is an absurd figure" (p. 1680).

Original Cost. The charges and credits since 1884 have been at cost. The appraisement of that date was made at a time when the cost of material and labor were both high (Rowland, pp. 6084, 6095).

Hence the book values, aggregating $9,064,222.12, represent the actual cost of the mains and services, as nearly as it is now ascertainable.

The Master's Basis of Valuation. In the case of the mains and services the cost of duplication at the present time becomes a favorable measure for the complainant. The Master adopts it.

In this way the actual cost or book value of the mains is raised from $7,852,151.03 to $12,636,150, and that of the services from $1,212,071.09 to $1,994,034.35, the figures stated in the decree. The total increase is thus $5,605,962.23.

Simpson's testimony was to the effect that the price of iron pipe rose from $25.50 to $28.90 from 1885 to December, 1905, as of which date the valuation was made, and that the additional labor cost is 20% (p. 691). The labor figure is probably exaggerated (p. 706). The price of pipe is $1.70 higher than the average for 1904 (p. 5313). The total tonnage is 122,018.4 (p. 3895). Hence by taking the price of 1905 instead of the price of 1904 complainant gained over $200,000; exactly half, indeed, of the total gain over 1884.

Simpson further testified, and it is undoubtedly the fact, that pipe laying has become in recent years more expensive in many streets on account of other subsurface occupation (pp. 672-3), and in most of the streets on account of the laying of new pavement (pp. 670-1).

He had indeed testified before the State Commissioners of Gas and Electricity in the proceeding which was pending before them from November, 1905, to February, 1906 (p. 5), that the value of the mains was $11,687,466.41, based as he then stated upon a mileage of 880 miles (pp. 1750-1).

In the present proceeding, in July, 1906 (p. 666), as above stated, he raised his figure about $1,000,000, although upon a mileage of only 822 miles (p. 668). His explanation when confronted with his former testimony was that he did not know that about seventy miles had been "written off the books." Nevertheless he insisted that his former estimate had been based on 822 miles, "whatever that testimony was" (pp. 1751-2). Assuming this insistence to be correct, he nevertheless failed to account for the difference in figures, and was not fully cross-examined about it. This could not have arisen from differences in cost of pipe. Not only is the increase nearly five times as much as the total increase of this item from 1904 to 1905, but the prices upon which his present valuation purports to be based are prices contemporaneous with the proceeding before the State Commission (p. 691). But Simpson's higher figure was endorsed, upon his statements, by complainant's expert Dr. Humphreys (pp. 1695-6) and adopted by the Master. It includes 27 miles of disused mains, but he testifies that these amount only to $103,207.01 (p. 4498). Simpson, who was a somewhat elastic calculator, got a little margin by estimating on the assumption that 90% of the street mileage was covered with new pavement, although the actual figure was 88% (see pp. 671, 684).

Present Condition. Simpson, whose testimony has been followed by the court testifies that the mains and services are as good as new. "They are absolutely physically as good as the day they were laid," and he has found no deterioration "in a single instance" (p. 669, see pp. 699-701, 703). They have indeed been injured at two points by

electrolysis (as to which see pp. 129-30, *infra*), but these have been repaired. The mains are subject only to the risk of being superseded by larger mains, or relaid to conform to the city's requirements as to use of the subsurface; the services, to supersession when private dwellings are superseded by apartment houses.

Franchises.

It was conceded by us that complainant had franchises to operate in the streets, and all of the valuations involve this assumption, as without franchises it could not be valued as a going concern. But for some years past there has been much discussion as to whether or not these franchises are revocable, so that they can be terminated by the state or city, at will or upon not over a year's notice. The subject was not formerly considered an immediately important one, although interesting as bearing upon the price to be paid if the city should ever conclude to condemn the property and take it over; but the present case brought it prominently forward by Judge Lacombe's holding that the franchises, if not revocable, could be made the basis of a very large exaction from the public in the matter of gas rates; and immediate litigation seemed to be challenged by the Master's extraordinary ruling that complainant's claims must be conceded because the city and state had not exercised the right of revocation or brought any judicial proceedings to oust the complainant from the streets (p. 192). It was the opinion of the undersigned that there was neither legal necessity nor propriety for an arbitrary and immediate revocation, nor for an

ouster suit; that complainant should be left in possession, although we believed it to be but a holdover tenant, subject to reasonable regulation of its rates, until the city should, if ever, desire to operate a municipal plant; that in that case reasonable notice should be given and an equitable adjustment arrived at; and that meanwhile the Master's ruling was too revolutionary and ill reasoned to be the basis of any action, until it should have been reviewed by the court; and the court did not sustain it (p. 419 top). The Attorney General, however, had felt called upon by the language of the report to bring a *quo warranto* action, and asked leave of court to do so. Leave was denied on the ground that whatever rights might exist were in the city, not the state. The *status* of these franchises has therefore never yet been determined by the state courts.

Existence of the Franchises.—Annexed hereto is an Appendix in which the law and facts bearing upon this subject are fully set forth.

The Special Franchise Tax.—This, which Judge Lacombe and Judge Hough regarded as so important a matter, amounting to an estoppel upon the state, seems to us to have no bearing whatever, because neither the incidence of the tax nor its measure is at all affected by the question whether the franchises are or are not revocable. We shall set forth the state law and its practical construction in the body of the brief (pp. 233-4, *infra*).

Valuation of the franchises.—Dr. Humphreys' valuation of the good-will at $7,500,000 seems to

have been intended to include the franchises. It was a valuation of "the good-will of that business, including the value of the established business, and its connections with consumers and other elements which go to make up good-will as distinguished from its tangible plant" (p. 209). Complainant's only other direct evidence was the assessment of the "special franchises" by the State Board of Tax Commissioners in 1906. The amount of the assessment was $31,900,000, which includes the mains and services as well as the intangible property. William Halpin, the chairman of that board, was called as a witness. He was not qualified as an expert, and the assessed value had already been ruled out as incompetent, but he was permitted to state without objection that in his opinion this was a fair and reasonable value (p. 1848). The testimony was irrelevant, because the state treats the special franchise tax as in the nature of an income tax. It is not regulated by the length of the franchise, but is the same whether the franchise be revocable or irrevocable (pp. 233-4, *infra*). This tax was fixed "as of the second Monday in January, 1906, when all taxes are determined" (p. 1850). At that time the legal rate for gas was one dollar, at which rate the complainant made an income justifying a very much larger assessment (pp. 26-7 *supra*).

The complainant filed on March 28, 1906, a complaint against this assessment, verified by the oath of its secretary, Mr. Carter, in which it furnished a valuation as follows (p. 6697):

> "The true value of complainant's special franchises in the City of New York *and the amount for which the same would sell under*

ordinary circumstances does not exceed the sum of $14,000,000.'"

Mr. Carter had shortly before testified before the State Commission of Gas & Electricity that the value of the tangible portion of the special franchises, that is, of the mains and services, was $11,687,466.41 (p. 1751). Hence his valuation of the intangible portion of the franchises is at a figure not over $2,312,533.59.

In his oath to the complaint, whose truth he reiterates on the trial (p. 3085), after stating his experience as an employee of the complainant and one of its predecessor corporations in various capacities since the year 1877, he testifies as follows as to his expert qualifications (pp. 6700-1):

> "Deponent is thoroughly familiar with the gas business in the City of New York, and especially in the Borough of Manhattan in said City. Deponent knows the extent and nature of the special franchises possessed by the Consolidated Gas Company, and by all the other gas companies operating and doing business in the Borough of Manhattan, and is familiar with the business and operations of all said companies. Deponent has made a careful and thorough study of all details of the gas business, *and is familiar with the intrinsic and relative values of the special franchises* possessed by the different gas companies in the Borough of Manhattan in said City."

The Master remarks that this is "of but slight assistance in arriving at a satisfactory conclusion," and pursues his general policy not "to attach particular importance to statements of the character appearing in the complaints above

quoted," since "they do not, under the authorities, constitute an estoppel, although sometimes valuable as evidence" (p. 203). The Court considers it as no evidence at all (p. 416). Neither Master nor Court adverts to the qualification clause or considers complainant's act in presenting this valuation as coming from an expert valuer to be an important admission.

The Court raises the valuation of the intangible portion of the franchises to $12,000,000 by a train of reasoning which (assuming the inferences correctly to follow from the facts stated) is based upon mistake as to the facts. Judge Hough states that upon the origination of the company in 1884 "it then issued stock of the par value of $7,781,000, representing the franchises it then acquired *and nothing else*" (p. 417); and then, without any evidence whatsoever to support him, and in square opposition to the repeated oath of the complainant (pp. 6691, 6697) makes them grow *pro rata* with the growth of the tangible property in valuation. The history of this $7,781,000 valuation is detailed at considerable length in the record, and must be set forth in some detail, in view of the importance attributed to it by the Court.

The $7,781,000. This, together with the $1,303,000 working capital, forms the residuum of the total capitalization as arbitrarily fixed by the consolidation committee in 1884. With all the liberality applied to the appraisement of the tangible property, it had reached only $29,994,000 *plus* the valuation of the New York Mutual Company, which subsequently refused to join (pp. 20-2 *supra*). There was a sharp difference of opinion as to whether the capitalization should

be made high or low (pp. 6377-8). Mr. Zollikoffer, President of the Metropolitan Company, favored a capitalization of $35,000,000. On the day after the date of the appraisements he put a motion on the committee record to the effect that the capitalization should be $43,000,000. He was overruled, and it was made $45,000,000 (pp. 6520-1). The Mutual also objected (p. 6377).

Judge Hough in his supplementary opinion states that defendants moved to correct his franchise valuation by having it "declared that the $7,781,000 valuation of 1884 was fixed by ascertaining the then market value of the share capital of the constituent companies and deducting therefrom the appraised valuation of the tangible property of the same" (pp. 424-5). The motions do not appear in the record. No motion involving that proposition was made by these appellants. They, as well as the Attorney General, denied that the capitalization had any relation to the market value of the share capital, and argued that on the contrary it was very much inflated even over that figure.

Judge Hough, when dealing with the question of the "rate of return," has assumed the right to take judicial notice of the market values of gas stocks and bonds and securities of a similar nature; a right as to which we are not aware of a precedent either way. If the right exists, it can only be accurately exercised by following the advice of Mr. Samuel Sloan (p. 6149), and examining "the price in the stock list." The standard publication for such matters in New York is the *Commercial & Financial Chronicle.* If it is proper to examine the quotations for the purpose of taking judicial notice of the rate of return a year

or two back on similar securities, we take it to be equally proper to take judicial notice of the quotations of twenty-four years back, for the purpose of testing this claim of the complainant that its capitalization was but equivalent to the sum of the market values of its stocks at the time. If so, the question can be quickly settled, for the bid and asked prices are set forth in the *Commercial & Financial Chronicle* for those dates. We annex hereto as Appendix B a tabulation showing the combined valuations of the stocks of the five companies (the Knickerbocker stock being included in the valuation of the Municipal stock) as near as obtainable to the beginning of each month from July, 1883, to August, 1884, inclusive, with the valuations for each week from September 6, 1884, to November 22, 1884, inclusive (it being remembered that the negotiations for consolidation began in 1883, the capitalization was determined after September 9, 1884, and the consolidation agreement dated September 29 and filed November 10). It will be remembered that the total capitalization, after the New York Mutual dropped out, was $39,078,000, from which should be deducted the obligations of the various companies amounting to $2,329,000 (p. 23 *supra*). The total market values of the capital stocks, if made the basis of the nominal capitalization, should therefore have been $36,749,000. But they did not reach $30,000,000 until January, 1884; and even in the speculative period immediately preceding the consolidation they were below $33,000,000. When the deal was consummated and the capitalization fixed, the bid price ran up for a moment to nearly $34,500,000, while the asked price was marked up over $35,500,000,

but both bid and asked prices ran off rapidly, and in five weeks even the latter had fallen below $33,000,000.

But there is enough in the record to show that the capitalization was not based upon market values, although the quotations appear there as to one date only (July 1, 1884, p. 6450).

Thus Mr. Lees, the President of the New York Gas Light Company, testifies that the stock of that company "was 160 or 170; somewhere along there; 160, perhaps; I should think 160 was all it was worth, and all it would sell for at that time, on an average" (p. 6330). The amount outstanding was $4,000,000. The indebtedness was $6,000 (p. 6132). It should therefore, on complainant's theory, have appeared in the total capitalization at $6,406,000. It did appear at $7,821,000 (p. 4821).

Mr. Zollikoffer the younger, secretary of the Metropolitan Gas Light Company, testifies that before the consolidation the stock of that company was down to 225 (p. 6513). The amount outstanding was $2,500,000. The indebtedness was $68,800 (p. 6132). It should therefore, on complainant's theory, have appeared in the total capitalization at $5,693,800. This stock had been falling in value, and some time previously had sold at from 245 to 255 (pp. 6162, 6513). Even upon the latter basis its capitalization should have been $6,443,800. It actually appeared at $7,422,000.

In the testimony of Mr. Moss of the Harlem Gas Company it appears that the stock of that company stood at 130 (p. 6307). The amount outstanding up to the time when the consolidation took effect was $1,800,000 (pp. 5702, 5717). The indebtedness was $170,000 (pp. 5602, 6132). The amount apportioned to the Harlem Company, on

complainant's theory, should therefore have been but $2,510,000. It was really $3,103,000 (p. 4821).

The Manhattan seems to have been the only company whose stock was not grossly overvalued, even on the basis of the very much inflated valuations of September, 1884. The company put in a claim for $12,000,000 in order that it should get 7% interest thereon. For this purpose it was only necessary to rate its stock at 300, which was about the actual value. It put in a claim at 320 and got a little above 300 (See pp. 6176, 6211-12, 4821).

Complainant's contention and the court's mistaken supposition as to the basis of the capitalization are based on a mistaken statement in the old Gilbert committee report, which itself is based on the statement of President Zollikoffer that the $7,781,000 item was arrived at "partly by value of stocks as they sold; but I don't know what else" (p. 6162) and that the reason suggested for fixing $45,000,000 as the total amount was that that "was about the value or the market price of the stocks at that time" (pp. 6521-2), and partly upon the statement of Mr. Day, counsel for the Municipal (which came out best in the transaction) that "that was my view generally" and that the committee took "all the capital of the companies at their fair valuation in the market" (p. 6211). Mr. Gawtry, who was the secretary of the committee of adjustment (p. 6129) and Vice-President of the Municipal Company (p. 6107), gives a different reason (p. 6134), and the younger Zollikoffer, who was present at all of the meetings of the committee, testified that the capital was not fixed with regard to the market value of the stocks to his knowledge, and that its apportionment was made entirely regardless of market price (p. 6510).

The actual facts above shown with relation to the values of the New York, Metropolitan and Harlem stocks show the latter testimony to be correct, and that if there was any understanding among any members of the committee as to matching values of the new stock against values of the old stock, the value of the new stock must be taken at some figure below par. The new stock seems to have been quoted at 84 at that time (p. 6176).

It thus appearing that the capitalization was fixed without any reference to the market values of the stocks, but by a majority report of a committee of adjustment it remains to ascertain what the surplus, over and above the appraised values, was supposed to represent. This of course is best ascertainable by inquiry into the method by which the amount was divided up among the different companies. The evidence makes the truth of the following statements perfectly clear: first, *that the surplus was $6,084,000, not $7,781,000;* second, *that it did not represent franchises except nominally;* third, *that it involved no valuation of franchises;* and fourth, *that it was a mere stockwatering operation, divided up in proportion to the actual sales of gas for a selected period.*

Among the papers submitted to the committee was a resolution providing for a certain plan for dividing up this balance. It was read to a witness who was inclined to assent to it as the plan actually adopted, and it seems by the other evidence to have been the plan adopted. It is as follows (p. 6213):

> "When all of the values are fixed and determined upon, the amounts thereof shall be aggregated and the difference between the total thereof and the amount of the capital of

the new company, as heretofore fixed, shall be deemed to be the value of the good-will and franchises of the several existing companies, and shall be divided between them in proportion to their individual sales of gas as adjusted and confirmed by the present committee of one of each company, to the gross amount of sales by all the companies so adjusted for the period from October 15, 1882, to October 14, 1883, and the sum thus divided shall be added to the schedule value of each of the existing companies, and shall together form the capital of the new company."

The younger Zollikoffer, who was present at all the meetings of the committee (p. 6510) testifies that the division was based on the business for the year October, 1882, to October, 1883, and continues as follows (p. 6509):

"Q. How was that business estimated? A. That was the actual business of the companies, the actual sales.

Q. You mean the sales of the gas? A. Yes, sir.

Q. And the sales of gas for the entire year? A. The entire year."

Mr. Gawtry testified as follows about it (pp. 6134-6):

"Q. How, in arriving at that basis, did you estimate the value, so called, over and above the values, so-called, of the properties, rights and franchises of the constituent companies to the amount of $7,781,000, including Mutual? A. That was based upon the amount of business done by the companies, if I remember right.

* * * * * * * * *

[p. 6135] Q. You mean the number of cubic feet of gas? A. Of gas sold. * * *

Q. You took the total amount of gas as reported from the consumers' meters? A. Yes, sir.

* * * * * * * * *

Q. You took the gas product and measured that, not by indexes at the place of production, but by the meters of the consumers? A. We did not take the gas product; we took the gas sales; that is not an intelligent question; leave out the word 'gas product'; the gas made at the works and the gas delivered to the customers is a very different thing; if you will use the word 'sales', that will be more intelligent.

Q. Whether the business was based on the product or receipts? A. The receipts had nothing to do with it.

By the Chairman:

Q. What receipts had nothing to do with it? A. The money received from the gas sold; the amount of dollars and cents did not enter into the question at all.

Q. State what did form that basis? A. It was the sales of each one of the companies for a certain period. * * * * *

[p. 6136] Q. Now having ascertained the business of each company, what was the next step in arriving at this figure, $7,781,000? A. I don't remember.

* * * * * * * * * * * * * * *

Q. Is your memory capable of being refreshed by any memorandum? A. I should want the sales of each company for the time, whatever it was.

Q. Given sales for each company for a given period of time, what next? A. Take the amount of capital over and above the valuations and apportion it.

Q. That is to say you agree on what the capital should be first? A. No, sir; after the valuations were finished we did.

Q. And the difference between the valuation and the agreed capital was made the subject of estimate and apportionment among the various companies? A. It was made the subject of apportionment among the various companies.

Q. And after that estimate and apportionment the amount arrived at was put down, and it was upon that basis which you have stated that the capitalization of the Consolidated Company was arrived at? A. I believe that was so."

Mr. Moss testified as follows (p. 6310):

"Q. Do you know how this item, $469,000, in rights and franchise of the Harlem Company was arrived at? A. It was upon the assumed valuation of all the rights and franchises of the company; and the right to sell gas in the city.

Q. How was that parcel apportioned to the Harlem? A. Because of their right to sell gas to the city.

Q. Their proportion of the difference between the total valuation of the properties of all the companies and the proportion of capitalization? A. Less a certain amount reserved for working capital.

Q. And that was apportioned to the Harlem Company, according to the amount of gas sold by them for a year or two previous? A. The sales of a certain year was taken as a basis.

Q. From October, 1882, to 1883? A. October, 1882, to October, 1883."

That the franchises claimed by the companies had nothing to do with this item is further shown by the testimony regarding certain of these franchises, which shows that they were not considered as a matter of any importance.

Mr. Lees, the President of the New York Company, who had been with that company since the beginning of 1861 (pp. 6322, 6329) did not know what special privileges his company had had prior to 1871 except that "it had originally exclusive rights in the city for a few years, but they had expired long before I went there" (p. 6345). It will be borne in mind that whatever rights the company had, were derived from the original grant in 1823. He thought that they had some rights; "I cannot say what; it had a right, certainly, to lay mains in the streets" derived from the city, but he could not say when; an exclusive right "at the beginning, but that expired long before my time" (pp. 6345-6). If the franchises of the various companies had been looked into, Mr. Lees would hardly have been so vague about it, only one year later.

But the most striking testimony with relation to the immateriality of the franchises was that of the elder Zollikoffer, President of the Metropolitan Gas Light Company. It will be borne in mind that the franchise of that company, according to the argument now advanced by the complainant, was precisely the same as those of the New York and Manhattan companies, and was perpetual. Mr. Zollikoffer testifies as follows (pp. 6526-7, 6528):

> "A. We had a right under the ordinances of the city to lay mains, service pipes, and to furnish gas and collect those bills afterwards under the laws of the State of New York, and to conduct the business in a manner according to the rules; but every thing was guaranteed to us that we should not be interrupted.
>
> Q. By whom? A. By the city, provided we got the franchise from the State.

Q. Was anything said as to its duration? A. It was thirty years from 1859, I think.

Q. *So that would expire in 1889?* A. *Eighteen hundred and eighty-nine, yes, sir.*

Q. That was really all the right you had, or all the franchise you had your company? A. Yes, sir; ours was for the whole Manhattan island.

* * * * * * *

[p. 6528] Q. In fixing the values of the rights and franchises so-called, as apportioned to your company, was the circumstance of your charter expiring in 1889 mentioned in the committee? A. I think they all knew it; I do not know that there was particular mention made.

Q. No particular stress made of it? A. No, sir; *but they all knew it.*"

If the respective franchises had had anything to do with the question it would be impossible to explain why the New York, Manhattan and Metropolitan companies (each now claimed to have had a franchise unlimited in time and space) got $1,417,000, $2,329,000, and $1,863,000 resuectively; while the Municipal company, whose franchise confessedly was to expire in twenty-three years, and had been rendered very doubtful by the then recent decision in Anderson *v.* Equitable Gas Light Company (12 Daly, 462), was allowed $1,175,000. The Knickerbocker Company, which claimed a franchise to the whole city running six years longer than the Municipal's, and also claimed a permanent franchise north of 79th Street, was allowed only $528,000 in all.

The companies almost certainly had valuable patents, but these were not taken into consideration in fixing the capitalization, possibly because

at the end of their respective terms of seventeen years each they would expire. It is barely possible that they may have all run out by 1884, and that those spoken of by Mr. Roome at page 6465 may not then have been acquired; but if those mentioned in the record as having lately belonged to these companies were still in existence in 1884, their value may be inferred from the fact that the right to use one of them had been sold by the Municipal company to the New York company for $300,000, the patent rights of the former company having been purchased at an expense of at least $350,000 in capital stock (p. 5600).

Other capitalizable property.

Meters and miscellaneous.—This item in the Master's report we did not contest before the court, nor have we filed any assignment of error thereon. As to this and the next item our course was determined by the general policy of raising in this court no questions not involving a very considerable amount.

Working capital.—This item in the Master's report was modified by the court to $1,616,000 (see p. 396), and we have filed no assignment of error to its conclusion. According to the Master's report, it would seem that this subject was not fully argued before him (p. 180). The reserve for working capital was arrived at in 1884 by taking one-thirtieth of the book value. It was at first $1,500,000 (p. 4821), and then proportionately reduced to $1,303,000, which is the nearest round sum to one-thirtieth of $39,078,000. One thirtieth of the present book value (p. 5032) would be about $1,590,000.

National Coal & Coke Co.—This was merely an investment in stock of a company with which the complainant did business. As the complainant held all of its stock, the company could conceivably be used as an instrument for creating fictitious apparent expenses, or as a cover for the concealment of actual profits. In either case the misuse could be corrected in ascertaining the complainant's true net income; but the court perceived the impropriety of including the stock as part of the capital, and struck the item out.

Goodwill.—The Master allowed $20,000,000 for franchises and goodwill as a single item (pp. 205-10). The court struck out $8,000,000 as representing the goodwill, which was disallowed (pp. 410-11).

Both the Master and the court recognize that complainant, being in the nature of a monopoly and not being subject to competition under the laws as they at present exist, has no goodwill in the ordinary sense of the term. In a competitive industry, the word denotes the probability of the customers' continuing to trade at the old stand. In a non-competitive industry like this one, it can mean nothing more than the probability of holding the customers if competition should be established. The Master used the term in substantially the same sense as that in which the term "going concern" is used in the Knoxville water case, now before the court, although he then proceeded to cite as authorities two cases which related to genuine goodwill (pp. 208-9). He admitted that none of the methods suggested by the evidence or otherwise afforded a satisfactory basis for a specific finding (p. 210).

The only testimony in the record on the subject came from two witnesses called by the complainant, and in both cases was admitted over the defendants' objection and exception; but of course, in view of the subsequent action of the court, the exception became immaterial.

Vice-President Addicks, being asked what concessions in his experience are necessary to draw business from an established company, named a minimum of 10% on the selling price of gas to private consumers (pp. 1580-1). He had not shown any experience on the subject. He had come into the employ of the complainant long after competition ceased in its own territory, and it does not appear that there was any gas war in Boston or Chicago during his previous experience there (pp. 1562-3); nor would a consumer have the same temptation to permit the introduction of a new service and meter during an ordinary gas war (expectedly to be of short duration and then terminate by a merger of some kind) which he would have in case of the establishment of a permanent municipal plant.

Dr. Humphreys fixed the goodwill at $7,500,000. He gave no reasons and was not cross-examined about it; but complainant's counsel stated in their argument below that the valuation was "at $20 per consumer". Both the Addicks and Humphreys calculations (and, it seems to us, all possible calculations of the kind in a maximum rate case) are based upon the assumption that the consumer can be made to pay more cents per thousand feet for his gas than would otherwise be proper, because of an expert opinion as to what his own future action would probably be, if he and the other consumers should join together in establishing a

municipal plant. Dr. Humphreys thinks that on the average each consumer should pay a reasonable rate of return per annum on $20, not on account of any outgo on the part of the complainant, but on account of this supposed probability about his own possible future action.

It has already been noted that Dr. Humphreys' valuation seems to have included the franchises as well as the goodwill (pp. 80-1, *supra*).

"*Astoria, i. e., capital invested in production of gas secured from other companies.*" This rather singular item in the Master's report was stricken out of the complainant's capitalization by the Court, but the Court allowed deductions from income by reason of the same matter which, capitalized at 6%, would amount to about $3,333,-333 (p. 99, *infra*), in addition to the item it allowed (and which we do not contest) as part of the operating expenses which on the same basis would amount to nearly $1,000,000 more (p. 102, *infra*).

Since the decree (very properly, it seems to us), treats the matter as one belonging not to capital but to income account, we shall discuss it at that place.

Complainant's Net Income.

On account of the Master's ruling that the year 1905 should be taken as the basis of computation, except so far as complainant should claim or defendants be able to establish (without the privilege of a preliminary examination of complainant's books) that it was an abnormal year, all calculations must necessarily start with Com-

plainant's Exhibit 94, which is set forth in full, and with the items of operating expense conveniently numbered, at pages 217-20 of the Master's report.

This shows the output and sales of complainant for 1905 to be as follows:

Gas made by itself.....	10,657,810,000	cu. ft.
Gas purchased from other companies	2,929,210,322	" "
Gas made and sold.....	10,419,461,426	" "
Gas purchased and sold..	2,863,702,341	" "
Total sales	13,283,163,767	" "

The small differences are due mainly to leakage, and to gas consumed by complainant itself. Nearly all of the sales were at the rate of one dollar per thousand cubic feet, or as it is commonly called, "per M." The City of New York, however, paid ninety cents per M upon 398,525,978 cubic feet, or about 3% of the whole, besides various amounts for special services which complicate the calculation and make an apparent return of over one dollar (pp. 5052, 5076). The gas actually sold at the dollar rate was 12,884,637,789 cubic feet. The gross profits (gas sold but not paid for, being treated by complainant as an operating expense) were therefore about $13,243,110.

The operating expenses disallowed by the Court are those numbered by the Master as 54 and 69, and portions of items 58, 61, 66 and 67. Items 47, 53 and 62 are misleading as stated in the table. They represent expenses incurred by complainant, but expenses which either were reimbursed or else related to items of Miscellaneous Income, and not to the price of gas. The

final columns in the exhibit, headed "Cost per M. c. f. made," and "Cost per M. c. f. sold" are for this and other reasons entirely worthless (see Judge Hough's remarks at pp. 400, 428). The inclusion of these columns is part of the general policy adopted by this complainant and gas companies in general to obscure the situation with misleading statistics of operating expense, as will be otherwise illustrated further on.

Deducting the operating expenses disallowed, the Court found the net income in 1905 from complainant's own product to have been $4,015,475.02, and from purchased gas $1,865,117.43, making a total net income of $5,881,192.45, which at eighty cents would have been, as the Court calculates, $3,224,592.45 (pp. 404-5, 407, as corrected at pp. 423, 430).

From this figure, and on the assumption that in 1906-7 the purchased gas will be made at Astoria, he proceeds to make a deduction of $200,000, (which would be the income at 6% of a capitalization of $3,333,333,) substantially to represent what the Master put down as "Astoria, *i. e.*," &c. (pp. 406-8). To this deduction we assign error.

The main operating expense disallowed by the Court was contained in item 67 (p. 220) of ten cents per M on total sales under the heading of "Contingent Expense (includes renewals)." This, generally called the "Ten Cent Item," is sustained by the Master after a long discussion to be found at 224-38, a discussion replete with the fallacies inherent in all arguments based upon the theory that operating expense varies per thousand cubic feet of sales. The Court threw out most of it, and substituted an "Eleven

Cent Fund," or an allowance of eleven cents per thousand cubic feet of complainant's own output, to take the place of items 34, 35, 36, 47, 48, 49, 50, 51, 52 and 67 (pp. 401-4).

The Purchased Gas.

This gas is purchased from four other companies in the Borough of Manhattan, whose stocks are held by complainant as follows (p. 184):

New Amsterdam Gas Co. 99%
New York Mutual Gas Light Co....51%
Standard Gas Light Co. 92%
Central Union Gas Co., owned by New Amsterdam Co.

The gas is really purchased, and is so treated by the court, but for some reason the contracts for its manufacture are in the form of, and are called—

Agency Agreements. There is no such agreement with the Central Union Company, which is under no written obligation to supply the gas (p. 1096). The written agreements with the other companies are in most respects the same. They are all dated December 31, 1902, *and they all run to December 31, 1907* (pp. 5047, 5049, 5050), or until eight months after the expiration of the period specially in contemplation by the court (Decree, p. 432), provided, that in each case either party could terminate the agreement upon one year's notice. It does not appear that notice had been given by any company, although the testimony herein did not close until 1907.

The other important clauses of the three agreements are as follows (pp. 5047-51):

I.—The Consolidated Gas Company of New York hereby employs the
Company as its agent and upon the terms hereinafter mentioned to manufacture, produce and deliver to it for the term of five (5) years, such illuminating gas of the illuminating power required by the laws of the State of New York as it may require during each year, for the said term of five (5) years, estimated to be equal to at least cubic feet per year, and to deliver the same to the gas holders, mains or meters of the Consolidated Gas Company of New York in such quantities and at such times as may be reasonably required by it.

The Company agrees to manufacture [&c.]

II.—The Company shall, as agent for the Consolidated Gas Company of New York, and at reasonable rates, purchase all the constituent materials and furnish the labor necessary to such manufacture, production and delivery, and employ in such manufacture, production and delivery its own plant and appliances.

III.—At the expiration of each month, the Company shall render to the Consolidated Gas Company of New York an account of all expenditures for constituent materials and labor made by it, as aforesaid, during such month, and the Consolidated Gas Company of New York agrees to pay to the Company, within ten (10) days thereafter, the amount due, according to such accounts, together with an additional ten per cent (10%) which shall be in full for its services and the use of its plant and appliances during the said month.

The agreement with the New Amsterdam Company contained also the following provision, which has been overlooked by the Master and court (pp. 5049-50; see pp. 4459-60):

> 5. The Consolidated Gas Company of New York further agrees that it will at the end of every period of six months during the term of this agreement pay to the New Amsterdam Gas Company interest at the rate of five (5) per cent per annum for the previous six months upon the amounts expended by the New Amsterdam Gas Company in making additions to its Ravenswood Works since March 1, 1901, for the purpose of increasing or facilitating the manufacture of gas.

During 1905 the New Amsterdam Company was still engaged in making additions to its plant, as is shown by the fact that the interest paid under this clause for the year ending October 31, 1905 was $56,132.72 (p. 1090), while for the year ending December 31, 1905, it was $58,149.04 (p. 5778). For the latter period it represented at the five per cent a capitalization, in cost of additional construction, of $1,162,980.

Gas Furnished Under the Agreements.—The amounts estimated in the "agency agreements", and the amounts actually furnished during the year ending October 31, 1905, are as follows respectively (pp. 5047-50, 5299):

	Amount Estimated.	Amount Furnished.
New York Mutual Co..	100,000,000	319,210,100
New Amsterdam Co...	500,000,000	2,112,227,300
Standard Co.	500,000,000	447,756,300
Central Union Co.....	.....	93,555,400
Total	1,100,000,000	2,972,749,100

For the year ending December 31, 1905, the total purchased gas was a little less, but the falling off was in the Mutual gas, in which complainant was interested only 51%, while the supply from the New Amsterdam, in which it was interested 99%, increased to 2,173,196,400. The new additions, just above referred to, so increased the capacity of the latter company that it supplied in each of the last four months of 1905 far more than the complainant's two coal gas plants, the 14th and 42d street stations, combined (p. 5807).

Necessity of the Purchased Gas to Complainant. —Its use was undoubtedly profitable, or complainant would not have taken nearly three times as much gas as it was obliged to take. But it had works of its own to fall back upon, as for instance the 111th street works with a capacity of 2,420,000 feet daily maximum (p. 1467), or 484,000,000 feet per annum, or more than the total gas purchased from the Standard Company. These works the court has capitalized against us despite our objection that the plant was idle (see pp. 175, 423, 1467, 4430; and as to other reserves see pp. 636, 1431-2, 1446, 3788).*

These idle works must be regarded as held in

* There is no sufficient basis for the Master's statement that the complainant's maximum daily sales during 1905 were about 70,000,000 feet. It had daily station records showing the facts (p. 1647) but did not produce them. The figure was taken from assumptions in questions of the city's counsel, not very positively assented to even by Mr. Addicks (p. 1654). They are opposed to probability. The average daily sales varied from about 45,275,000 down to less than 26,000,000 (p. 5807). Mr. Bradley is reported as saying that the maximum variance is 6,000,000 (p. 547). He probably meant a variance between two days in the same month (see pp. 556-7). The statement that its maximum capacity was but 51,000,000 feet is also misleading. The figures relate only to *rated* capacity. In emergencies, a much larger output can be obtained. The 14th Street plant, rated at 3,500,000, averaged over 4,500,000 in January (pp. 1714, 5709). *There is no probability that complainant was ever called upon for more than its own rated capacity.*

reserve, because gas can be purchased more cheaply than it can there be made.

Profitableness of the Business to the Other Companies.—The court assumes that it is not a paying business to them, but only continued from necessity; overlooking their unexercised option to terminate the relation, and the fact that they are furnishing three times the supply that the agreements call for.

The New Amsterdam is indeed under complainant's thumb, but of the Mutual stock complainant owns but a bare majority, so that that company cannot be imposed upon without a remedy; yet it is supplying three times the gas estimated in the agreement.

The explanation of the transaction is that the selling companies are no longer expanding in territory. They "are confined within a limited area" (p. 4499), so that their main opening for increased output is in selling to complainant. Judge Hough admits that "possibly" this "has afforded to the selling companies a method of disposing of surplus product"; but if so, why does he say that the business "cannot and ought not continue"? (p. 406).

The special clause which we have quoted from the New Amsterdam agreement (p. 102, *supra*) proves that at least the New Amsterdam gas is actually surplus product; for when it requires an extension of plant, the Consolidated pays to have the extension built. The clause also proves that to this company at least the transaction is profitable; for *when the extension is built it buys from the New Amsterdam, of which it owns 99%, in preference to the Mutual, of which it owns but 51%* (p. 103, *supra*).

Astoria.

This name for short is given to the property of the Astoria Light, Heat & Power Company, whose stock is held by the complainant.

We have already made some use of the figures given as the cost of the land, tunnel and plant of this company, and adverted to the fact that its ratio of operating expense cannot be foretold (pp. 35, 65-6, *supra*). It is located in the old village of Astoria, in the Borough of Queens, across the East River from the Borough of Manhattan.

The land and tunnel are intended for a collection of separate plants or "units" (p. 546), but at present only one "unit" is under construction, which will have a capacity of 20,000,000 cubic feet a day, or 4,000,000,000 annually (pp. 542-3, 546).

Time of Construction.—Work began on a small scale perhaps as early as 1902, but not seriously until the summer of 1903 (pp. 1573-4). The first "unit" was still under construction on January 30, 1907 (p. 4570), although it had then already been putting out some gas. The testimony having closed immediately after that day, we are uninformed as to whether it was completed during "the year beginning May 1, 1906."

Commencement and Extent of Operation. It started to produce gas on December 3, 1906, about 11.50 A. M. (p. 4226). Being still unfinished, it naturally could accomplish but little. Being asked as to the daily output, Vice-President Addicks testified on January 23, 1907, as follows (p. 4292):

> "A. Commencing with about 200,000 feet on the 3rd of December and increasing grad-

ually to about 500,000 I should say, or possibly 800,000, and then the second house was started, as I remember it, and that was allowed to come up gradually to possibly a corresponding amount.

Q. By the second house you mean part of the first unit? A. Yes, the second house of the first unit, and then they were both gradually increased, so that now they are making over 4,000,000 feet a day, the two of them.

Q. You have been receiving that gas since the 3rd of December without any agreement as to what is to be paid for it, is that true? A. None whatever.

Q. No agreement whatever has been made? A. No agreement whatever. The amount in December was something like between 40 and 50 million feet for the whole month, so that the average, you see, was a little over a million feet."

It will be noticed that even on January 23 the unit was turning out only one-fifth of its rated capacity. In December it turned out only from 40,000,000 to 50,000,000 feet as against 324,000,000 feet of purchased gas in December, 1905. When the testimony was given, it was only supplying at the rate of 124,000,000 feet per month as against 320,000,000 feet of purchased gas in January, 1905 (p. 5807).

This gas was sent through the new sixty inch main to the New Amsterdam works at Ravenswood, and thence through that company's tunnel under the East River to the Borough of Manhattan (pp. 3861, 3981-2, 4292).

No price was fixed; but as the complainant owns the whole of the stock of the Astoria company, this would be a mere matter of bookkeeping (pp. 4292, 4568, 4581). In fact it would appear from Mr. Addicks' testimony that, up to January 23 at

least, the operation was experimental only (pp. 4292-3):

> "A. Sooner or later we will have to arrange for the payment of the expenditure to make the gas.
>
> Q. Well, if that is the price, you will sooner or later have to arrange it? A. Yes, they cannot run on forever without getting something for their product."

This, it will be noted, was nearly three-quarters through the "year beginning May 1, 1906," during which the court finds that four billion cubic feet of gas was supplied from the Astoria works (pp. 408, 425-7, 432).

Probable Use of the First Unit. There is some indication of unsettled purpose on the part of the complainant, and even of a desire to threaten retention of the unpopular coal gas plants in Manhattan as a means of getting rid of the eighty cent gas law (Addicks, p. 1587).

The ostensible plan at the time of the trial in 1906 was to use the first unit as a substitute for the purchased gas. Complainant's counsel, often afraid to trust his witnesses to testify uncoached, interrupted the cross-examination of the Secretary (p. 944), and led the Vice-President (p. 1573), to be sure that this should be matter of record; and the court follows them in its opinion (p. 406).

But if this be really the plan now, it is a new and changed one. When the Astoria construction was begun in 1902, it was with the purpose of scrapping the existing plants and using gas made over there (Bradley, p. 577). Plainly this was to be the use of the first unit, for after work was

begun at Astoria the "agency agreements" above described were made, and made to run until long after the first unit should be completed. The same purpose was publicly announced in the spring of 1904, to make public sentiment in support of a bill then before the Governor for his action, which bill was for the purpose of confirming a claim to a franchise to lay pipes in Long Island City (p. 2300, see pp. 3161, 3792, 5961). That bill was indeed vetoed (p. 3161); but the required pipe was laid just the same, and is the conduit by which the gas is conveyed to Ravenswood (Bradley, p. 545; Simpson, pp. 3861, 3981; see p. 895). The purpose was the same when the "Ten Cent Item" was hurriedly introduced into the accounts after the Stevens Investigation of 1905 (see pp. 871-6, 943); and during 1905 new construction was being done at Ravenswood to permit the manufacture of additional gas for sale to the complainant (p. 102, *supra*), which would hardly have happened if it had been intended to discontinue use of the new construction in the following year.

But a mere purpose in the minds of the directors of one of the gas companies affected will not, we suppose, be held enough to annul a statute. If the company can reasonably conform to the statute without suffering a deprivation of property, due process of law is respected. Hence the question is not what the directors really intend to do, whether they mean what they say or are trying to hoodwink the public and the court, but what they may reasonably be asked to do by the state.

The two coal gas plants on Manhattan Island are the 14th St. plant with a daily rated capacity of 5,000,000 cubic feet, and the 42d St. plant with a daily rated capacity of 4,500,000 (pp. 1714-15).

Multiplying these figures by 200 (pp. 546-7) gives their respective annual capacities at 1,000,000,000 and 900,000,000.

The New Amsterdam plant, which is practically owned by complainant, has by an expenditure of over one million dollars for that purpose been enabled to supply complainant with gas at the rate of 2,173,196,400 feet per year, or fifteen per cent more than the rated capacity of the other two plants combined, and it is now actually producing in proportion (pp. 102, 103, *supra*).

The cost of manufacture at the two Manhattan stations was 37.88 cents and 34.87 cents respectively (pp. 3357-8, 3360, 5976-7). The cost of manufacture at New Amsterdam was 29.01 cents for the year ending October 31, 1905 (p. 3489, see p. 4469).

This gives us the following tabulation, showing what would be the cost of producing 1,900,000,000 cubic feet of gas, at the old works, and the cost of producing the same amount at New Amsterdam:

14th St. (1,000,000 Ms at .3788)	$378,800
42d St. (900,000 Ms at .3487)	313,830
	$692,630
1,900,000 Ms at .2901.....	551,190
Saving at New Amsterdam....	$141,440

This is a saving of six per cent on a capitalization of over $2,350,000 or of five per cent on a capitalization of over $2,825,000. In addition, the complainant would be able to realize the present value of the land under the 14th St. and 42d St. plants. This is valued by the Master at $3,620,000 (pp. 159-60); from which sum should be deducted the comparatively small items disallowed by the

court as lands vacant, &c., and the value of the land under the large holder at 14th St. if that is desired to be retained as a distributing holder; and to which sum should be added the value of the land at 21st St. which is occupied by an oil gas plant for enriching the coal gas. These savings amount to far more than the combined value of the two plants to be scrapped (p. 175).

It may be suggested that growth of its own business may cut off future assistance from New Amsterdam. But there is no evidence to support such a finding. What evidence we have is the other way; and the burden of showing it if true was upon complainant, which does not seem to have overlooked any point of advantage to itself.

It may be further suggested that we are taking the actual cost at New Amsterdam, while the complainant will pay cost plus ten per cent. This is true, but it will get back the ten per cent through its ownership of the New Amsterdam stock, so that this figure will not enter into the calculation.

Probable Increase of Sales. The court, as part basis for deducting $200,000 per annum from complainant's net income, assumed that there would be *an increase of sales which would increase the net cost of production.* This increase he figured roughly at one billion cubic feet for "the year beginning May 1, 1906" over the calendar year 1905, saying that he "preferred to rest the assumption upon normal increase of population and advance of business as being better justified [than increase from diminution of price] by the evidence before the court" (pp. 406, 427).

But the "evidence before the court" directly opposes this theory, instead of supporting it. The

increase from 1904 to 1905 was less than one-eighth of that amount, or 112, 404,000 (Complainant's Exhibit 85, p. 5039), considerably less than one per cent of the total sales. As Dr. Humphreys points out (p. 1825), *per capita* it was a falling off (p. 1593). *The sales in 1906 were very likely even less than in 1905.* Vice-President Addicks testifies as follows in September, 1906 (p. 1607):

> "Q. Are you selling more gas this year than you did last year? A. I am a little in doubt whether we are selling a little bit less or a little bit more. Some months I remember we have sold less. Month before last we had a material gain, evidently on account of the very dark weather we had during one month.
>
> Q. Are you buying more gas this year than you did last year? A. I have not got that figure in my mind."

As to the expected increase in 1907 over 1906 (p. 1592):

> "Q. Then you agree with the statement in which he concludes 'that the people are consuming about as much per capita as they will be likely ever to consume?' A. I think it is very probable, taking conditions as we see them existing to-day in the island of Manhattan."

In fact New York already consumes almost 9,200 feet *per capita*, or more than any other city in the world, London coming next at from 8,000 to 8,500 feet (p. 1591). The population of the Borough of Manhattan is now increasing but slowly, and Mr. Addicks endorses the theory of Dr. Humphreys that the "point of saturation" is "about reached"; in other words, "that the

people are consuming about as much *per capita* as they will be likely ever to consume" (pp. 1591-2).

Complainant took the position all through the hearing that, because the point of saturation had been so nearly reached, no considerable increase could be expected even from a lowering of price; that the experience of the gas war of 1899 and the anthracite coal strike of 1902 can not be repeated. This is a matter of pure speculation, since Judge Lacombe's injunction prevented the experiment from being made. A vast amount of guesswork about it, and of argument based upon remote analogies, has been put into the record. It seems to us to be a region where the state can guess to a limited extent, but where a Federal court can not guess for the purpose of annulling a state statute.

Cost to Complainant of the Astoria Gas. As the Astoria is a separate company, we must figure on the theory that the gas is purchased, even though the complainant owns one more per cent of its stock than it owns of that of the New Amsterdam. On the other hand, it is matter of indifference to complainant's directors whether they put the purchase price high or low. Hence we must reach an equitable adjustment of the price of whatever gas if any we assume to be bought during the year 1906-7. This price should represent the cost of manufacture and an adequate return upon that part of the Astoria capitalization which is applicable to the purchased gas.

For the purposes of this appeal we are willing to accept the court's estimate of fifty cents per M for the product of the first Astoria unit (p. 407), the court's miscalculation being as to the amount of output.

Repairs, Replacements and Contingent Expense.

The standard method, theoretically considered. This is expounded by Dr. Humphreys, who is introduced to us as the leading living authority in Europe or America; nor have we any criticism to make of it as a system adapted to the standard (that is, the average) gas company. Our objection to it here is one of inadaptability to the very peculiar history and circumstances of this particular company.

The method is not presented as a mere theory of Dr. Humphreys, but as one generally approved by the gas pundits (p. 1819), and (although it does not adopt it) by the complainant in particular.

The *maintenance* ("total maintenance" he calls it) of a gas plant involves expenses for *current repairs, current renewals,* and *deferred renewals* (p. 1832). The first two items make no difficulty here, as they have been always paid for out of operating expenses (p. 1797; State's Exhibit L, p. 5078). The deferred renewals, or *final renewals,* are often but inaccurately called *depreciation* (p. 1806). They do not represent normal and expected *deterioration,* as do the current renewals, but depreciation from causes previously unknown, like electrolysis, loss of undeteriorated plant by obsolescence or "supersession", extraordinary accidents, increase in the general rate of wages, unexpected legal restrictions as to candlepower, &c. (pp. 1692-5, 1827-8, 1845).

To take care of these risks, this standard method provides two funds: first, a *depreciation* or *renewal fund* of so many cents per M of sales, or so much per cent *of depreciable capital,* each

year; and second, a *reserve fund* equaling ten per cent. *of the total capital invested in the business,* to be accumulated by setting aside five cents per M per year until the required amount has been reached (pp. 1692-5).

The amount to be set aside for the former purpose is ascertained by estimating the life of the plant. In this case he estimated the life of the manufacturing plant at 33 years, and of the distributing plant at 60 years, and averaged them up at 40 years (p. 1803). He therefore took 2½% of the depreciable capital as an amount which would replace it in forty years (p. 1694). He included Astoria in the capital, thus raising it from $26,919,418.38 to $34,919,418.38 (p. 1818). This called for a depreciation charge of $860,480 annually (p. 1826) or .65592 cents per M for 1905 (p. 1692).

Assuming the constitution of such a fund, what is to be done with it until it is needed? One of the city's experts said "Put it aside at compound interest." This, as he and Dr. Humphreys agree, would make the annual charge for the first (or depreciation) fund only 1.05 cents per M instead of 2.50. Dr. Humphreys advises *that it be put into extending the plant,* but *that the additional plant thus acquired should not be regarded as part of the capital of the company.* He says (pp. 1797-1800):

> "I advocate taking the reserve for depreciation and putting it back into the business, keeping very careful track of that reserve and how it is spent, so it cannot be considered as a warrant for extra capitalization. In other words, it is against the depreciation to the limits of my estimate. * * * Now the question is how shall we invest that

money. If the business is lying dormant and is not extending and there is no use for further capital, then of course we will put it out to accumulate at compound interest and of course the day of the death of the business is coming. If we do not go ahead, we will go back very shortly. But if the business is active and there is use for capital to cover extension of business, I claim it is the wise policy to take that depreciation fund so far as it will go—you will probably require a good deal more, but so far as it will go—and use that depreciation fund not only for the current renewals and even the deferred renewals, but for the final renewals, to offset the final renewals and invest it in extensions so as not to draw in that extra capital which otherwise would be necessary for those extensions. * * * Now, if you are not ready to use the surplus from depreciation charges for exhausted part of the plant, at any particular moment, you have the opportunity to use it for extensions, and you put it into extensions. How much you will have in forty years, of course, is problematical.

Q. On those extensions you get an increased busines?

A. Yes, and you need it.

Q. That goes on to your general earnings on gas sales?

A. Yes.

* * * * * *

[p. 1799] Q. Where are you going to get your money from to build your new plant, or old plant?

A. So far as you had used that money in advance for extensions, in lieu of depreciation, you would have to put out capital at that later day rather than at the earlier day. You would have saved yourself capital charges in the meantime.

* * * * * *

Q. But you are putting it into extensions,

so at the end of this time you have a larger plant and you may have reproduced a plant that was the same value of your original plant, but you have nothing back to take care of your original plant which has given out?

A. We will take a simple case and say that there is no necessity for renewals in the meantime and that the plant ceases to exist at the end of 40 years and goes out of existence at once. In the meantime I have taken my 2½ per cent., which multiplied by 40 is 100, and at the end of 40 years I have reproduced that much more property, and my original plant goes out. I have got the 100 per cent. for the old 100 per cent."

And again (p. 1807):

"Q. A final renewal fund—is it for a fund which will replace a plant when it wears out? A. Not entirely, no, sir. It is to maintain the asset of plant at par. Now, it may not be used for renewals at all. We have fulfilled our duty as managers if we have kept our plant asset at par and can do that by placing certain moneys as I have explained in extensions, *and do not recapitalize them,* but have that piece of extension take care of that piece of depreciation. Of course that is practically being done all over the world in every business."

And again as to the second or *reserve fund* (p. 1826):

"A. I would invest it the very best way I could, whether in the business or any other way.

Q. Well, the best way—— A. *It would not be capitalized,* and would not be given out as dividends.

Q. The best way you could discover to invest your $2.50 was to put it back into the gas

business, it being one of the most productive things you could think of? A. Yes.

Q. Would you put this back in the same way? A. I don't know whether I would or not. There would be no objection to doing it in my mind.

Q. And if you did and there should come some of these untoward circumstances which you think might possibly happen, where would your money be to take care of them? A. You would not have invested that in the business unless you needed that extra capital. You would simply have then deferred the bringing in of the extra capital. When the trouble occurred you would now get that capital which otherwise you would have obtained outside in the first instance."

And again, on further cross-examination as to the status of the property bought with moneys out of these funds (p. 1830):

"I should say it would be obtained from the depreciation of the capital already invested. In other words, you would impair your capital to that extent *but it would not be new capital.*

* * * * * * *

It would be obtained from new money brought into the business but it would not be from my standpoint new capital. *I should not feel warranted in considering it new capital.* I should simply consider it money obtained somehow to repair losses I had made.

Q. And not new capital being received it is not an extension of the present business? A. Not an extension, no, sir."

And again as to the reserve fund (pp. 1836-7):

"Q. You would consider that if it were put into extensions of plant or a new unit added,

that would be proper business management? A. It would temporarily take the place of moneys that would otherwise have to be brought in.

Q. A new unit would be an extension of plant, would it not? A. Not necessarily.

Q. You consider the Astoria plant is an extension of the Consolidated Gas Company, do you? A. Yes.

Q. And you consider this 5 per cent. reserve might properly be invested in that plant, would you not? A. Temporarily invested until needed, when they so defer the day for borrowing money for that.

Q. And when needed capital would have to be obtained from other sources to take its place?

A. That is right.

Q. And put into the Astoria plant in place of that which you take out, for the purposes reserved and set aside?

A. That is one way.

Q. And you expect this 5 per cent. invested in the Astoria plant would be earning as much return as is reasonably to be expected from a plant of that kind?

A. Yes.

Q. And then, if a company had the good fortune to have created at the end of forty years a plant of the same size as that which it started with, out of this depreciation fund, paying for those renewals which would otherwise have to be taken out of depreciation, out of its current repair account, you would have a plant of twice the value of the original plant, would you not?

A. If you were able to take from what I call, for present purposes, my final renewal fund of 2½ per cent., and you were able to keep up the present plant, not only in full working order, but so as to take care of all exhaustion of life, and also build a plant

of the same value, you would of course have a plant of double value.

Q. And that plant would have been paid for without any increase of capitalization of the company?

A. Yes, sir.

The standard method, considered in the light of experience. Is this method, which may be good for the average company, applicable to one which holds the strategic position of this complainant? This question can best be answered by actually applying it *nunc pro tunc*, and seeing how we come out.

The total of the new construction, together with all additions to real and personal property up to October 31, 1905, amounted to $9,693,595.90 (Complainant's Exhibit 79, p. 5032). The amount contributed toward this expense by new capital can not have been more than $3,929,371.82 (p. 23, *supra*). Hence current net earnings must have contributed at least $5,764,224.08, over and above all current and final renewals found necessary for the first twenty-one years of the company's existence. The $9,693,595.50 increased the manufacturing output to two and one-half times that of 1884, and increased the distributing capacity to an extent enabling complainant to more than quadruple its sales. But none of this amount would have been required from Dr. Humphrey's two funds, which are intended only to keep capacity and condition at par.

If it were now the intention of complainant to continue in business as a manufacturer of gas, its 21 years of experience should afford the best test of the annual contribution necessary to establish and keep up a depreciation or final renewal fund.

As we have seen, Dr. Humphreys estimates the life of complainant's manufacturing plant at 33 years; much of it was pretty old at the time of the valuation of 1884, so that its depreciation must have been considerable; it has been very largely renewed during the past few years; and the new plant makes two and a half times as much gas as the old. Mr. Mayer, whose appraisement has been accepted by the Master and court and is the basis of this decree, finds a present depreciation in this plant of but 3½%, or $604,988. The court deducts from Mayer's total valuation but $32,489, whether for additional depreciation does not appear (pp. 175, 1342, 4587). The mains and services are practically eternal under the conditions prevailing in New York, barring supersession and electrolysis (p. 78, *supra*). Simpson values them without depreciation. The court, in adopting his figures, necessarily finds that they are as good as new, past renewals having provided for electrolysis and for maintenance of past value upon supersession.

How much per cent per year then has to be put aside by a company in the extraordinarily favorable position of this company, in order to provide a fund that will provide against all contingencies reasonably to be expected?

Complainant's "depreciable capital" at the beginning was about $20,000,000 (this excludes the real estate and franchise items), and at the end about $29,000,000 (Complainant's Exhibit 79, p. 5032). The increase was more rapid during the first years of the period (Complainant's Exhibit 78, p. 5032). Hence we may assume $25,000,000 to be about the average amount for the whole period upon which Dr. Humphreys

would have based his depreciation or renewal fund.

Assuming the court's correction of the Mayer valuation, just above noted, to be due entirely to depreciation, we find that the following amount, by the actual experience of this complainant, had to be provided for:

Renewals 1884-1904 (p. 5079).....	$4,663,838.32
Renewals to Oct. 31, 1905 (p. 5080)..	194,666.87
Depreciation allowed by Mayer....	604,988.00
Depreciation allowed by the court..	32,489.00
Total	$5,496,982.19

A depreciation fund of $1.05 per annum per $1,000 of depreciable capital would have yielded the following result:

$25,000,000 at .0105, each year.....$	262,500.00
Same for 21 years without interest..	5,512,500.00
	5,496,982.19
Surplus, Oct. 31, 1905.....	$15,517.81

It may be suggested that $1.05 per $1,000 was the figure of Prof. Bemis, the city's expert; but Prof. Bemis was expecting to lay his $1.05 up at compound interest, and the basis of his calculation was the same as that of Dr. Humphreys. The fact is that both these gentlemen have been going about the country testifying in various tribunals about necessities of the average company, and they figured here on the same theory, without noticing how different the conditions of a New York City company are. Averages taken from other cities' experience are inapplicable in New York, and Dr.

Humphrey's calculation of depreciation was as wide of the mark as the similar calculations of the City's expert.

To keep up this $1.05 annual fund, the sum necessary in 1905 would be calculated upon a depreciable capital estimated by complainant at $29,000,000 (*supra*, p. 120; Dr. Humphreys at page 1818 makes it only $27,000,000 exclusive of Astoria) and would be $304,500, or about 2.29 cents per M upon the total sales for that year. The actual renewals were $282,219.67 (p. 5080), *a difference of only $22,220, or less than .0017 per M.*

But if a depreciation fund of uniform constitution, pursuant to Dr. Humphreys' plan, would require a charge of only 2.29 cents per M in 1905, why were the actual renewals for the whole 21 years' period 3.01½ cents per M, as he points out at pages 1692-3 (10.60 for repairs and renewals, less 7.5858 for repairs)? Simply because the whole calculation based on average repairs and renewals per M, by which the Master was misled although the Judge was not, is based upon the favorite fallacy of all gas company accountants, and of this complainant in particular—the fallacy included in the assumption that expenses vary per M. The fallacy is exposed by analysis of State's Exhibit L (pp. 5077-80), which is an annual account of repairs and renewals, prepared by the complainant (p. 939; and see Humphreys, p. 4775).

It is sufficient to set forth a few comparisons in the following tabulation:

REPAIRS AND RENEWALS.

Year.	Total cost.	Do., cost per M.
1885	$338,510.33	8.59
1905	$974,286.65	7.34

Year.	Total cost.	Do., cost per M.
1891	$1,028,278.60	16.40
1904	$1,079,941.74	8.19
1896	$938,042.58	13.71
1900	$976,700.35	9.87
1905	$974,286.65	7.34

If the company had kept up a depreciation fund from 1884 on Dr. Humphreys' plan, it would have come out as follows:

Interest on $25,000,000 for 21 years at 2½%, uncompounded.....		$13,125,000.
Renewals, &c. (p. 121, *supra*)	$5,496,982.19	
Additions (p. 119, *supra*)	5,764,224.08	
		$11,261,206.27
Surplus		$1,863,793.73

It would thus have paid not only for all the renewals (the purpose for which it was intended), but as well for all the additions that actually have been made out of net income, besides nearly half of those made out of new capital (p. 23 *supra*).

This may suggest that at least $5,764,224.08 should be deducted from the capitalization as representing what was actually collected out of the consumers for use as a depreciation fund, invested as such funds are properly invested, and according to complainant's leading expert non-capitalizable; but no assignment of error has been based upon this theory by any of the defendants.

The company has never found necessity for a reserve fund, if a full depreciation fund and an

eight per cent. dividend on non-imaginary capital keep a company out of a necessitous condition.

In view of the facts just set forth, there is no probability of any increased rate of repairs and renewals in the future, if the manufacture of gas be continued.

But the complainant intends to discontinue the manufacture of gas, and instead buy its gas from the Astoria Light, Heat & Power Company; and it complains that this will involve a depreciation in the form of plant-scrapping in the Borough of Manhattan, estimated by Vice-President Addicks at $10,400,000, a figure for which no definite detail is given (p. 1588).

But this step is not taken on account of any depreciation or supersession. Retirement from business is not depreciation, when it does not appear that the business is becoming less profitable. Complainant is not going out of manufacturing gas perforce. It is abandoning that branch of its business for motives of policy. This can only be because in the long run the change will prove profitable, for the reasons already stated (p. 66, *supra*); to which may be added that the change will release real estate which will sell for 15% more in the opinion of the experts to whom the Master gave credence than their own figures; and which on that basis should net a greater sum than the plant-scrapping loss (pp. 159-60; *supra,* pp. 35, 45); most of this being "unearned increment" of which complainant has never yet taken the advantage (see pp. 42-3, *supra*).

No depreciation fund has been laid aside unless, if we adopt Dr. Humphreys' method now as against the consumer, we adopt it *nunc pro tunc* as of 1884. In that case it must be stricken out of the

court's capitalization of the depreciable property (see pp. 114-17, *supra*).

Complainant's former method. — Until the Stevens investigation of April, 1905, no depreciation fund, final renewal fund or reserve fund was created. A "depreciation account" was kept. This was simply an account of articles "scrapped" for any reason. They were set down at their book value, (that is, their appraised value if inherited in 1884, their cost if bought since). The amount of the "depreciation account" was offset by the amount spent for renewals. Any amount spent for renewals over and above the amount of the "depreciation account" was treated as "additions" or "new construction." No distinction was made between "current renewals" and "final renewals", between those required by current wear and tear and those due to "supersession," although so large a part were due to the latter cause, as the works have been rebuilt and their capacity more than doubled (pp. 1713-16). The system is described by Mr. Carter at pages 4506-8.

Complainant's new method—the "Ten Cent Item."—The Stevens investigating committee held its first session on March 30, 1905, and its last public sitting on April 21 of that year (p. 1673). It shortly thereafter reported that complainant could afford to furnish gas at 75 cents. The complainant at once began to prepare to weather the storm and this "Ten Cent Item," being an entry among operating expenses of ten cents per M on the total sales of gas, was conceived. It was adopted in May (p. 871). A new account was opened under

sary to guard agains accidents any further than by its fire insurance account. The damage claims against the company were, and still are, treated as an item under the general head of "Expenses, General Office," amounting in 1905 to $30,438 (p 5788). Mr. Carter and Dr. Humphreys both tried to think up extraordinary precedents of accidents, but in the whole history of gas making they were only able to remember the Boston case, mentioned by the Master at page 224, and explosions in Philadelphia, London and Liverpool. They remembered none in over eighty years' experience in New York. Of course, if an accident of great magnitude should occur here, the company would be at liberty to make application for relief under Mr. Justice Brewer's provision, approved by this Court, in Smyth *v.* Ames (169 U. S., pp. 477, 549-50; see also Hough, J., at pp. 403-4, 426-7, 434).

Fluctuations in business.—It is difficult to conjecture the meaning of this item of Mr. Addicks. It does indeed appear that the rate of increase in the business was considerable at some periods, although scarcely perceptible in 1905 and possibly succeeded by a slight decrease in 1906 (pp. 110-11, *supra*). But the output of this company is flexible and conforms itself to the demand. If there be any extraordinary fluctuation, like the supplanting of gas by electricity on a scale not now foreseen, it can be dealt with on the principle of Smyth *v.* Ames, just above cited.

Cost of materials. Complainants have presented their accounts for 1905 on the theory that that is a typical year, and the Master has refused defendants leave to examine its books for the pur-

pose of showing that it was really untypical (p. 26. *supra*). If it is a fairly typical year, it is an average year, so that if the expenses happen to be higher than next year they will presumably be compensatingly lower later on, and *vice versa*. Hence if it is assumed to be a typical year—and if it is not a typical year there is no evidence to support a decree in this case—there is no reason why the state should make provision for a contingency fund against increase in cost of materials.

Such evidence as we have is to the effect that 1905 was a year of particularly high prices, and therefore one in which operating expenses in this particular were presumably above the average, which indeed is so well known that perhaps it can be judicially noticed. We have already pointed out that the increase in price of iron pipe was as great from 1904 to 1905 as it had been from 1884 to 1904 (p. 77, *supra*). But nearly all of the machinery is iron and steel, and its value is estimated by its weight (pp. 171-3). In 1906, the year as to which the calculations in the decree are made and during which the testimony was taken, the price of steel at least was lower than in 1904 (Mayer, p. 1442). Hence we have proof that 1905 was a particularly high year for all expenses of replacement. The price of iron and steel is commonly an index of the price of all materials, and there is nothing to the contrary here.

Electrolysis. This is the name given to the action of stray currents of electricity in the street, which under certain conditions will corrode the iron pipes. This is a trifling danger. Complainant admits that there is no danger from the elec-

tric light pipes belonging to the Edison system (Lieb, p. 4090), and that none has been experienced from the subway. Up to this time only two cases of injury from electrolysis have been noticed. One of these is at the Brooklyn Bridge, where there are various electric currents, and the other at West Broadway and Spring Street, the elevated railroad having a power house at that point (pp. 674-5, 677, 687, 707, 4104). The latter is one of the most dangerous spots in the city (p. 4158). The electrification of the elevated road had been completed from three to five years before the testimony was taken, so that past experience shows the danger from electrolysis to be small. Prof. Sever of Columbia, who testified for the state, said that the danger was decreasing (p. 2892). The complainant's witness Lieb also admitted that conditions on the elevated railroad were improving (pp. 4106, 4108). Superintendent Simpson testified in the strongest terms that the mains were all as good as new in 1906 (p. 78, *supra*). Upon this testimony the Master must have come to the conclusion that the danger from electrolysis is too small to be considered; for he capitalizes the mains and services at their full value without depreciation. If they had been injured by electrolysis, this finding would of course have been impossible.

Having considered the reasons stated by Messrs. Addicks and Carter for the Ten Cent Item, and stated by the Master, we now take up the three further reasons assigned by him.

Candle power. The old Gas Commission in its estimate allowed an increase of 1.81 cents to the operating cost on account of the increase from 20

to 22 candle power, and Vice-President Addicks claimed 1.83 before the Master (p. 231). The court having stricken out the Ten Cent Item, complainant unsuccessfully attempted to have the 1.83 allowed as a special item of itself (p. 424). The facts about it are as follows:

The 22 candle power provision was introduced into the law in 1897, but by some oversight no penalty for its violation was provided (Act of 1897, chapter 385, p. 5264). The act was enacted subsequent to the city charter, which had provided for 20 candle power with a penalty, and it was conceded before the court that the charter provision, although re-enacted in 1901 in the revised charter, did not prevent the continued effect of the 22 candle power provision (Greater New York Charter of 1897, chapter 378, § 578). The complainant however disregarded the law until it was re-enacted with a penalty in 1905, the new statute taking effect on July 1 of that year (Bradley, p. 648). Except for the insertion of a penalty provision, the only new requirement in the act of 1905 was that the city tests were now required to be made within a mile of the "distributing holder" instead of within a mile of the "place of manufacture" (p. 5, *supra*).

The complainant urged before the court that it should be allowed to charge a higher rate to the consumer on account of the imposition of this penalty, just as the street car conductors are said to have demanded a raise of salary when they were first made to ring up their fares.

The average candle power found by the city tests during the first six months of 1905 was precisely 22. The average during the last six months was 24.19 (City's Exhibit 47, p. 5540). The aver-

age for the whole year was therefore over 23. There was considerable controversy on the trial as to whether an average of 23 allowed sufficient margin to the company, and the company claimed that there was so much variation in the amount of loss between the works and the testing point as to make so small a margin unsafe. On the contrary, Mr. W. H. Gartley of Philadelphia, for whom Dr. Humphreys had "the highest respect" and "would hesitate a long time before I doubted anything that he stated," claimed that actual experience under the Philadelphia 22 candle power requirement showed that by adopting a proper method an almost uniform candle power could be supplied. Mr. Gartley's paper was evidently most important, but the record is very blind about it. Dr. Humphreys states that it was "a new proposition which Mr. Gartley has brought forth," and one about which he himself would not as yet express any opinion (pp. 4785-8). Complainant introduced a tabulation, got up by Mr. Carter (p 4498), purporting to show that there was a very great and very irregular loss in candle power between the works and the testing place (Complainant's Exhibit 368, p. 6068); but the tabulation is entirely misleading. It is misleading because the gas tested by the city is not gas purely of complainant's manufacture, but a general mixture of its own gas and that purchased from other companies. The purchased gas, which is between one-third and one-quarter of the whole, is delivered by the other companies into complainant's holders or mains, so that it is impossible even for the companies as between themselves to keep any account of how much of the mixture passing under the streets comes from the companies other

than the complainant, except by estimates based on their total output and the total demand of their other consumers (Carter, pp. 894-5, 1666; Bradley, p. 1729; Simpson, pp. 1759-60). The new Astoria gas is all delivered by the Astoria Company to Ravenswood, and thence comes into the Borough of Manhattan mixed with the New Amsterdam gas; mixed, therefore, with the gas which the New Amsterdam is furnishing to its own consumers as well as with the gas which it is selling to the complainant (Simpson, pp. 3861, 3981).

Vice-President Addicks' estimate of 1.83 cents as the cost of enrichment (p. 1613) seems to be as erroneous as the rest of complainant's testimony on this point. The most direct evidence which we have is that of complainant's own experience, comparing November-December 1904 with November-December 1905. This comparison we are able to make by reason of the fact that we have in Complainant's Exhibits 93 and 94 detailed statements of operating expense for the year ending October 31, 1905, and for the year ending December 31, 1905, respectively. The reliability of these statements is not conceded by the defendants, but complainant is estopped from claiming that they do not give in every particular (except as otherwise stated by it) a perfectly fair estimate of the expense of making gas. The conditions remained almost the same, as complainant's output for the two periods varied only in the percentage of .0002. The proper way to arrive at the cost of the unit candle power in gas is to divide the cost of one gallon of oil by five for each candle power (Bradley, pp. 663, 658-9). In other words, an increase of two candle power requires two-fifths of a gallon of oil per M; and to raise 10,657,810 Ms from 20

to 22 candle power would therefore require 4,263,-124 gallons. But the actual increase was only 371,763 gallons (pp. 979-80, 2050).

Hence either the actual increase in candle power was less than 0.18, or else there was some economy introduced which lessened the amount of oil required to make a thousand cubic feet of gas.

Taxes. The Master's estimate of an increase of 1.13 cents per M on taxes is based upon testimony of Secretary Carter at page 1667. He divides the expected increase into two items.

The first item is a special franchise tax of $68,-563.87 or a percentage of .0052 per M. These special franchise taxes are all contested, so that the items are simply reserved for payment at some future day. The business done by the company during 1905 was practically the same as during 1904, and in 1906 may be less (p. 111, *supra*). Hence there is no probability that the special franchise tax, whatever it may be, will be higher in either of the two latter years than in the former. Furthermore, the tax is assessed as of the month of January. Hence the tax assessed in 1906 belongs to the year ending April 30, 1906, if years are to be computed on the basis assumed in the decree herein. If the 80-cent gas law is sustained, complainant will be assessed very much less for the year 1906-7 (pp. 233-8, *infra*).

The other item is $81,307.81 or .0061 per M, on account of the fact that there has been an increase in assessments aggregating $5,455,000. It appears from the question of complainant's counsel that the new assessments are being contested. It does not appear whether the increase is on real property or personal property. This item is not

as gross an improbability as the increase in special franchise tax, but as it constitutes an increase of nearly one-third in the rate in a single year, either complainant was already grossly over assessed or else it will be probably reduced. The item is quite speculative; and we may add that if it was not grossly under-assessed in 1905, its real estate has been grossly over-estimated by the Court below; for the tax rate being 1.490519 (p. 1002), and the real estate tax in 1905 $179,778.95 (p. 223), it would follow that the real estate assessment was under $12,065,000 for that year. But this includes all of the real estate rejected by the Master and Court, and also all of the plant which by law is regarded as real estate, although not so called by this company; and assessments in New York City are at the sum for which the property would sell under ordinary circumstances (pp. 4918-19).

Labor cost. There is nothing in the evidence to indicate that labor cost is likely to increase. So far as appears, the tendency is the other way. Care should be taken to distinguish between *labor cost* and the *rate of wages.* It is a familiar fact that labor cost often goes down when wages go up; in other words that people getting better wages do better work, and that the improvement in output is more rapid than the increase in wages; also that the improvement in wages is often accompanied by an increase in labor saving machinery, so that the number of employees is less. It is not claimed by complainant that the general rate of wages was reduced in 1905. It is matter of common knowledge and of proof in this case that wages were rising; yet Vice President Addicks testifies that the labor cost in 1905 was less than

the average labor cost for the previous five years by an amount equalling .78 cents per M. (p. 1639), although the winter of 1904-5 was so severe a one that Simpson's payrolls were one-third higher than in the winter of 1905-6 (p. 716). Every labor item was lower in November-December 1905, than in November-December 1904, although the output was less by a percentage of .0002 only (Complainant's Exs. 93, 94, p. 5050). The reduction in 1905, in face of the heavy payroll, must have been due to increased efficiency of the working force, or to the introduction of labor saving machinery. The latter is the explanation given by complainant's expert Mayer, whose testimony was accepted by the Master. He says (pp. 1478-9):

> "Q. I thought you said that within the last two years there has been no material increase or decrease in the rates of steel or labor, didn't you? A. If I remember my testimony correctly, I think I stated that the material at present was perhaps slightly less and the labor slightly more, so that one would compensate the other approximately.
>
> Q. It would amount to about the same thing? A. Yes; now, when I speak of labor I mean total labor for the entire construction. Of course you understand that the wages are very much higher at present than they were at that time.
>
> Q. At what time? A. In 1903 and particularly 1904. From 1903 to 1904 the rates were jumping very fast.
>
> Q. When did they cease to jump—in 1904? A. They have not ceased to jump yet, and God only knows when they will, nobody knows.
>
> Q. Then, as I understand you, as labor jumps up, material jumps down, so that they keep about an equilibrium? A. Not absolutely. No, that was merely an opinion that I

gave you off-hand, because I had that condition in my mind at the time I said that. I believe that it is approximately correct. For instance, *the reason that the total cost of labor is less at the present time than it was in 1903, is due to the fact that we were compelled to improve our field machinery in order to offset the constantly increasing demand for wages.*

Q. That has been the experience of every line of manufacture, hasn't it? A. Yes, I presume so.

Q. That is, as wages increase the inventive genius of man on the other hand produces labor saving machinery and therefore we arrive at the result that we can produce cheaper although we pay more for labor? A. Yes, I presume that the same conditions exist in other branches of business the same as ours."

In rebuttal, over defendants' objections, complainant introduced testimony to the effect that there has been an increase (not of labor cost, but) of wages, of "substantially 10 per cent," at some date not stated, but apparently in 1906. Based on 1905, this increase is estimated at $180,000 a year, alleged to wipe out the above difference of .78 in labor cost and make .62 additional. But the .78 was a percentage of decrease of labor cost, while wages were rapidly increasing up to 1905, as has just been shown. The two radically different items, wages and labor cost, are confused. We can find in the record no information warranting a finding as to the labor cost of 1906, one way or the other.

Mr. Mayer admits that while labor was "*a little bit* higher" on August 31, 1906, than two years previous, building material was "a little bit less,"

so that in his line at least the total averaged about the same (p. 1442). Exclusive of the slight increase in consumption of oil, attributed by complainant to the new candle power requirement, and of the increase in its price, due to a contract with the Standard Oil Company as to whose propriety there was a great deal of evidence and dispute before the Master and Court, the materials enumerated in Exhibits 93 and 94 (p. 5050) decreased in cost slightly from November-December 1904, to November-December 1905; but this was mainly due to improved methods whereby an equal amount of gas could be made with a little less raw material.

General summary.—Complainant characteristically picks out a few items where it claims an increase in 1906-7 over 1905, while keeping its books closed and supplying no general account for any period after December 31 of the latter year.

It does not even give an item showing what it claims to be the general expense of 1906, or any part of that year, as compared with 1905.

It does inadvertently show in the Exhibits last referred to the general result of November-December 1904, as compared with November-December 1905. Notwithstanding the fact that the candle power and pressure provisions were in force after July 1, 1905, in the later period the cost of manufacturing gas was .0026 less per M than in the earlier. Probably if there are any small items of increase in 1906 over 1905 they would be offset if a proper reduction were made in the item of "Expense, General Office," whose increase of $63,176.29 in November-December, 1905, over November-December 1904, an increase of nearly one-

quarter of the whole, or of .006 per M, can hardly be due to anything but work at Astoria; thus showing that this large item should be heavily cut down for the whole year; a fact suspected by the city's accountants, but which they unaccountably failed to follow up (p. 5789).

Items not claimed by Complainant.

There are two items which are often allowed, but which this complainant does not claim.

Going concern.—In case of condemnation by the city, this item would be included. It would not be included because complainant had incurred any expense which ought to be reimbursed, but because the state or city would be trying to get a valuable property without losing the time necessary to build it up. The state or city would be trying to save not only the item of "interest pending construction," but also the item of interest after completion of the construction and up to the time when a fair rate of income is earned on the investment. "Going concern value," in the true sense of the term, has been discussed in the Knoxville water case now pending before this court, and the phrase has been defined by the President of the appellee company in that case as "a summation of the deficiency of earnings in the first years of business to provide for a fair return on the capital invested therein"—an extension of part (a diminishing part) of the item of interest pending construction. This item is discussed and allowed in a condemnation proceeding by Mr. Justice Brewer in National Water Works Company *v.* Kansas City, quoted by the Master at pages 206-7.

This "going concern" expense, in fixing rates, can conceivably be capitalized for all future time, or else satisfied by allowing an extra high rate of profit during the first years after the concern becomes actually profitable. It seems to us that the latter should be regarded as the most satisfactory method of dealing with the item, both from the point of view of the public and from that of the promoters of the new enterprise. There should be no variance in the permanent capitalization of two companies otherwise similar, only because one took longer to get agoing than the other. In the case of the present company the item received the latter treatment, as we have already shown (pp. 28-9, *supra*).

Amortization. When the public grants a franchise for a limited term, it ought to permit the recipient to charge a sufficient extra rate for his gas to make up for the property that he is going so soon to use. The public pays more for its gas in order to keep better control. According to the opinion generally held until recently, and the opinion which we maintain to be correct, this complainant's franchises, so far as it owns them and they are valid, were limited in term and therefore good cause for an amortization item; but complainant's progenitors, who obtained the franchises, charged rates sufficient to cover this item (pp. 28-9, *supra*). Complainant's new theory is that some of these franchises are perpetual; and if so, there is of course no amortization item.

Skill of officials. The Master quotes from a report of another Special Master certain *obiter dicta* to the effect that the skill of the employees

of a company is a proper item of capitalization (p. 207). Complainant, so far as we are aware, has made no claim of such startling novelty. The officers and employees of a corporation are not the corporation itself in any sense. They are hired by it, and can be hired away by another company by offer of a little higher wages; and whatever rate of wages is necessary to pay, the corporation must pay and is entitled to charge up as against its customers. Rates for gas cannot go up and down according as expert witnesses swear before a commission or a court that the corporation is more or less fortunate in securing skilled employees. The state must fix rates on the theory that the employees are competent, and take measures to enforce proper service if it turns out that they are not competent.

Rate of return.

The Circuit Court did not decide the question of the reasonable rate of return upon the evidence, but "in part by taking judicial cognizance of local business conditions"; concluding therefrom that 6% is not "a profitable, satisfactory or attractive rate for the investment of capital in a gas business," but "the lowest rate which in the City of New York can be considered legislatively fair," etc. (p. 428).

If the court can take judicial notice of the fair local rate for gas investments, the right must be exercised by examining the actual quotations for the stocks and bonds of corporations engaged in that business; and this is practically impossible so far as the Borough of Manhattan is concerned, because the complainant has been since 1900 largely

a holding company, holding securities of other companies at a very low rate of profit (State's Exhibit B, p. 5[illegible], and because all of the other companies doing business therein are controlled, and all but one are almost entirely owned, by the complainant.

The facts upon which the court based its judicial notice do not appear. So far as they are represented by market quotations, the present post-panic prices can be found in the Bond and Quotation Supplement of the *Commercial & Financial Chronicle,* published monthly. By examining these quotations it will be perceived that any mortgage bond issued by a company comparable with complainant, running for a considerable time in the future, will net the investor somewhat less than 5%,* although prices have of course fallen a little in the last two years. Market quotations of gas stocks are so much affected by special considerations that it is difficult to get much use out of them. Moreover, quotations for the past year are abnormally low, while the state legislates with relation to the conditions of the average year. The stock of this complainant stands in the market as a security of the same class as the stocks of the highest class of railroad companies, and can be compared with them as to the relation between market price and customary and expected dividend.

*See for instance, Bridgeport Gas Light Co. 4s, 1952, 86 bid; Brooklyn Union Gas Co. 5s, 1945, 107 asked; Consolidated Gas Co. of Baltimore 5s, 1939, 110⅛ bid; do, 4½s, 1954, 92 bid; Laclede Gas Co. 5s, (St. Louis), 1919, 101½ bid; Newark Gas Co. 6s, 1944, 128 bid; Newark Consolidated Gas Co. 5s, 1948, 103½ bid; Troy Gas Co. 5s, 1939, 106 bid; Washington Gas Co. 4s, 1927-9, 98 bid. The bonds of the minor New York companies are on about a 5% basis (B. & Q. Suppl., Oct. 3, 1908, pp. 44-5).

The only reported cases of which we are aware, where the court has taken judicial notice of the rate of return, are New Haven Trust Co. *v.* Doherty, 74 Conn., 468, where it noticed that 1¾% was below the current rate, and Collins *v.* Wardell, 63 N. J. Eq., 371, where it noticed the fact that the return upon safe investments had been continually diminishing for many years, and had come down to a 4% basis.

Complainant's testimony intended to bear upon the rate of return was considered by the Master to be of little value (pp. 243-4). The witnesses were bond brokers or gas men.

Their testimony was objected to by the defendants.

Mr. Halsey expected at least 10% upon the value of the property (p. 1697). On cross examination, however, he said (pp. 1698-9):

> "A. It depends entirely upon the conditions, but I should think that a stock that paid 5 per cent. and was certain to continue to pay 5 per cent. would sell very much better than that; sell close to par.
>
> Q. It would probably sell at 102 or 104? A. It might; it might sell at 75, depending on all the conditions, franchise and the location, permanency of the business; all of those things enter into it."

He said that "you can buy a great many securities to-day on an 8 or a 10% basis if you wish to," but would not deny that a 4% basis might apply on "securities that have paid their dividends for the last twenty years, where the company has a monopoly of the business and has paid its dividends regularly" (p. 1699). Messrs. McMillin,

Bertron and Forbes testified to various high rates expected by persons investing in gas enterprises. The city called Secretary Carter to the same effect, and other similar testimony, in the shape of extracts from affidavits, was admitted over objection. (See pp. 807-8, 1676-8; Complainant's Exhibits 225-234, pp. 5281-8.)

It does not appear that any of these witnesses or affiants had in mind, or had had in their experience, any enterprise approaching in value that of this complainant.

Defendants' testimony.—The state presented no testimony on this point, relying upon the insufficiency of the complainant's case. The city called two statisticians, and put in certain stock quotations indicating that gas securities of established companies were sold upon a basis averaging less than 5%. These quotations are set forth by the Master at page 245. He justly observes that in each case there may be many special elements tending to inflate the market value; but complainant, while putting in a good deal of testimony as to some of the companies referred to, presented none tending to show that there were any companies in cities comparable with New York whose gas stocks stood on a higher basis than those produced. The testimony therefore seems to be entitled to some weight, unless it is to be assumed, in the absence of all evidence to that effect, that it is the universal custom of such companies to hold back a very large proportion of the earnings, for the purpose of cutting melons in the future. The Master also fails to call attention to the fact that two of the stocks mentioned by Professor Bemis

are preferred stocks, which therefore cannot increase their returns by melon-cutting. These are the preferred stock of the Massachusetts Gas Companies, which was quoted in September, 1906, on a 4.52 basis, and the preferred stock of the Laclede Gas Light Company of St. Louis, which was then quoted on a 5.26 basis (p. 2672).

The Master also omits entirely the significant quotations of gas bonds, which are set forth at page 2673, being abstracted from the *Commercial & Financial Chronicle* for September 8, 1906 (see pp. 2348, 2530-2). Taking the quotations of 5% bonds of companies in large cities, having twenty-five years or more to run, we obtain the following abbreviated tabulation (p. 2673):

City.	Date of Maturity.	Return on Investment.
Baltimore	1939	4.5
Brooklyn	1945	4.4
Buffalo	1947	6.4
Chicago	1947	4.7
Montreal	1933	5
Newark	1948	4.7
Paterson & Passaic	1949	4.9
St. Paul	1944	5
Syracuse	1946	5
Troy	1939	4.4
Westchester	1950	4.4

Certainly the Consolidated Gas Company could issue bonds that would stand as well as those of the companies in Brooklyn, Troy and Westchester, and which therefore would sell on a 4.4% basis.

The Buffalo company, by the way, is managed by complainant's witness Dr. Humphreys (p. 4759).

Complainant's experience. Complainant's stock has been too speculative an article to afford very much assistance. While earning an average dividend of 8% (p. 28, *supra*), and prior to the purchase of securities of the other companies, it ranged from 111 up to 168 during the hard time years 1894-6, and from 136½ up to 241½ during the years of recovery 1897-9 (pp. 5034-5).

Other testimony bearing on the rate of return. There is quite a little testimony in the record bearing on this question, which was not introduced for that purpose, and which therefore possesses a special value.

The rate of return regarded as sufficient by the stockholders of the old Manhattan Company in 1884 was 7%, as appears from the following testimony of Mr. Day (p. 6212):

> "the Manhattan people said 'our stock is worth 320'; and if the stock is put in at market price into the Consolidated, 'we ought to have the new stock at par to measure our capital, at 320, high enough, so that if we simply get on our new stock seven per cent. interest we will be satisfied,' and we will not be satisfied with less. * * * they said they did not expect to get over seven per cent., and they ought to have the stock par for that.'

Mr. Mayer testifies in effect that the rate of interest on capital used in construction is 5% (p. 1321). Dr. Humphreys puts it lower (p. 1685).

Dr. Humphreys also testifies quite extensively about the rate of return to be expected from ex-

tensions to the plant, paid for out of earnings and offsetting depreciation (see pp. 114-119, *supra*). He makes the rate 4% (pp. 1674, 1798, 1823); or probably more than 4% (p. 1801); 5% (pp. 2762, 4762).

In a controversy between the Holyoke Water Power Company and the City of Holyoke, he based his valuation upon the earnings of the company, taking them at the rate of 5%. His testimony proceeded as follows (p. 2353, as corrected at p. 424):

> "Q. Why do you take 5 per cent. as the sum at which you capitalize the net earnings of the company? A. In my judgment that was a fair return on that kind of an investment.
>
> Q. By that do you mean annual return to the persons who put their money into it? A. Yes.
>
> Q. And if the investment were represented by stock, you would mean that dividends should be paid at the rate of 5 per cent? A. Yes, sir. * * *
>
> Q. And I understand you to say that you valued this plant on the same basis that you valued the plants which you were employed to appraise in New York and New Jersey and other States? A. The same conditions generally. * * *
>
> I did not go into that very specifically, but I reinforced my opinion as to the values by my general impression that gas properties and lighting properties in Massachusetts are perhaps a little better protected than in other parts of the country. I did not make any special allowance, but I thought that reinforced my judgment as to the values."

Dr. Humphreys tried to explain away this testimony when called in rebuttal. The court may judge whether he succeeded in doing so (p. 4708).

Dr. Humphreys' testimony referred to by the Master at page 243 is to be found at pages 1689.

1836, It is to the effect "that *the original investors up to the time the business is well established* are entitled to 10%, and the final average must be made up on the basis of what the new capital can be brought in at in view of the natural hazards," and figures out a return of 10% on a capitalization of 3.50 per thousand of annual sales; or at the rate of 10% for forty years upon all of the capitalization except "the reinvestment covering depreciation" (see pp. 1689, 1836). This testimony does not seem to be applicable to the present controversy, in view of the antiquity of this complainant's predecessor companies, their very large early dividends, and their large reserve funds accumulated out of earnings (pp. 28-9, *supra*).

Another interesting piece of testimony is that of Mr. Greene, complainant's expert on bulkhead values. There are very few sales of that class of property, and all the witnesses used the rentals to a considerable extent as a basis of capitalization. Mr. Greene testified as follows (p. 1257):

> "Q. What did you base your valuation of $4 per square foot of that land under water upon? A. Because land under water is rented, leased for platforms and things of that kind at various prices, sometimes downtown and on the North River at 25 cents per square foot per annum, and further uptown at less prices, and my judgment is that land under water at that locality could be leased for 20 cents per square foot per annum, which, *capitalized at 5 per cent.*, makes $4 for the value."

And again (p. 1263):

> "Q. Now, you give a valuation there of five dollars a square foot? A. Yes, sir.

Q. On what basis did you arrive at that figure? A. Because land under water on the North River will rent for platform purposes or things of that kind for twenty-five cents per square foot per annum which *capitalized at five per cent.* gives five dollars."

And again (p. 1265):

"Q. You say you capitalized the 25 cents per square foot at 5½ per cent.? A. Five per cent.

Q. Why do you capitalize it at 5 per cent.? A. Well, a matter of custom and a matter of somewhere near right; *between 4 and 5. I use 4½, sometimes 5.*

Q. You regard that as a fair return on the investment? A. I think it would be fair in this particular case."

And again (p. 1267):

"Q. And you testified that in your opinion the land under water at this particular point, Pleasant Avenue, between 110th and 111th Streets, is fairly valued at $3 per square foot? A. I do.

Q. What consideration entered into your mind in forming that opinion? A. That it would rent for 15 cents per square foot per annum, which *capitalized at 5 per cent.*, would amount to $3."

And again (p. 1270):

"Q. Is there any relation between rental value and the real value? A. I think so. I think that the real value is ascertained by capitalizing the net rental value at a given percentage, 4 or 4½ or 5."

He seems to have followed an established custom of the Dock Department in giving these figures (p. 1273).

The Master and Court have followed Mr. Greene's valuations, obtained by capitalizing rental values on a 5% basis, and then held that the State will be guilty of confiscation if it did not permit complainant to net 6% on property thus capitalized.

Pressure.

The Attorney General has undertaken to brief the question of pressure, and we therefore do not go into the facts as to that branch of the case. The Court should be cautioned, however, that, as we are informed, the State never relied upon the testimony of Mr. Edgerton, which is the basis of the remarks of the Circuit Court in its opinion. It relied upon the system of district governors discussed in the cross-examination of Mr. Bradley by Mr. Page; as to which complainant did not assume the burden which the law casts upon it, of showing that the expense of such a system would be prohibitory.

Summary of Facts.

The following are the more salient facts bearing upon complainant's history and finances:

Original capitalization of complainant.—This company was formed in 1884 by consolidation nominally of six old companies (one of which, however, owned all the stock of another), on which occasion there was a recapitalization. The plants were appraised on the basis of duplicating them as they stood, and the real estate was appraised by agreement. A valuation for the tangible property of each old company being thus obtained, the total capitalization of the new company was then fixed by agreement at $45,000,000. The difference between the latter figure and the total value of the tangibles was next divided up among the various old companies in proportion to their sales of gas for the year ending October 14, 1883. One-thirtieth of the share of each old company was then set aside as working capital. The balance was set down as "rights, franchises, &c.," but was merely an arbitrary figure, not based upon any theory or estimate. The resulting capitalization was as follows:

Tangibles at appraised value as of 1884	$29,994,000
Working capital	1,303,000
Rights, franchises, &c	7,781,000
Nominal capitalization of complainant	$39,078,000
Assigned to N. Y. Mutual Gas Light Co., which failed to come in	5,922,000
Total valuation as originally agreed	$45,000,000

Out of the shares of the various old companies the new company retained an amount sufficient to pay off their obligations, amounting to $2,329,000.

Capitalization of the original companies. This consisted of the stocks of the five companies*.....$15,500,000
The amount actually invested by the stockholders was not over..... 10,635,200

The balance is made up by stock issued at fifty cents on the dollar, and by stock dividends made out of net earnings, the regular dividends also being very large.

Present capitalization of complainant.—This is now nominally fixed at.....$80,000,000 besides debenture bonds, convertible but not yet converted into stock, and invested in certain outside enterprises, and besides certain other bonds, to the amount of.....$1,387,000

The stocks and bonds were partly sold at a premium, however, and on the other hand the new capital was mainly invested in the securities of other companies. The new capital brought in since 1884 and invested in the complainant's own business is not over.....$ 3,929,371.82
Original nominal capital..... 39,078,000.00

Present nominal capital in gas business $43,007,371.82

Of this the amount actually invested by the stockholders is as follows:

Before 1884 (as above).....$10,635,200

*The stock of the sixth company was owned by one of the five, which paid for it $1,000,000 out of the above $15,500,000.

Since 1884 (as above)..... 3,929,371.82

$14,564,571.82

Complainant's investment in securities of other companies is.....$50,405,364.89

Net earnings of complainant.—Down to March 15, 1900, when it began investing in stocks of other companies, its dividends were.....$33,345,598.80
And its earnings invested in addition to the plant are..... 5,500.000

This shows a net return of over 8% on the appraisement of 1884, after throwing out the fictitious items of $1,303,000 and $7,781,000. Since March 15, 1900, its capital has been largely tied up in other enterprises. Its return on the stocks represented by securities of other companies has been under 3%, and on part of the debentures it has had no income at all.

Its net income during the year 1905 is estimated by Judge Hough at.....$5,891,597.45
or if 80 cents had been the price of gas 3,224,592.45

The 80 cent price would have yielded a return as follows in 1905:

On the $43,007,371.82 nominal capitalization about 7½%
On the $14,564,571.82 capital actually invested nearly..... 23%

Defendants contend that these estimates of net income should be increased in order to make them applicable to conditions after May 1, 1906, as the annual value of the complainant's permission to do business will be diminished by the reduction in the price permitted to be charged for the sale of

gas. This will require some reduction in the "Special Franchise Tax" item of.....$406,909.23

Complainant's real estate. This originally cost about..... $3,539,044.48

To duplicate it with real estate sufficient to accomplish the work which complainant is doing would cost about $5,660,125.00

The present value is found by the Court to be.....$11,985,435.00

but if the appraisements of the city's and state's witnesses (woh are qualified and unimpeached experts) were taken, the amount would be diminished by about.... $3,200,000.00

In reaching its estimate of present value the Court has taken the price which would be paid for each plot if the company's plant were removed from that plot but left on the adjoining plots. If the plot were sold with the plant on it, the plant would in no case add materially to the value, and would sometimes slightly diminish the value on account of the cost of removing it. If the plot were valued on the assumption that all of the plants in the vicinity were removed, its valuation would be increased about 15%.

Complainant's manufacturing plant. The original cost is not shown. The amount necessary to duplicate it with another plant capable of an equal output at equal expense is not shown. The Court has valued it as it was valued in 1884, namely, on the theory of duplicating it as it stands today. It would not, as matter of fact, be so duplicated by a new company, but would be replaced by one more economical. The Court

estimates its value at..... $15,500,000
The complainant in verified reports to the taxing officers, and its secretary under oath, have recently valued it at about..... $8,500,000
apparently on a theory of depreciation due to a forced early abandonment of gas manufacture in the Borough of Manhattan.

Complainant's mains and services. Their book value, representing actual cost, is.. $9,064,222.12
To this the Court adds the sum of.. $5,605,962.23
to represent value added by the city in putting improved pavement over them, so that they cannot be duplicated for their original cost. Nevertheless the complainant in verified reports to the taxing officers, and its secretary under oath, have recently valued them at..... $4,261,156.39

Complainant's franchises. It is conceded by these appellants that complainant has franchises, but contended that they are all revocable upon short notice. Their book value of $7,781,000 was reached in the manner above stated.

Complainant's capacity, output and sales. Complainant has a rated capacity of 51,000,000 cubic feet of gas per day, but can produce more than this in a day upon an emergency at its regular plants, besides having a reserve plant. The highest average demand for gas in 1905 was under 46,000,000 feet per day in January, and probably the highest demand in any day was not above its rated capacity.

It buys, however, over one-fifth of its total product from other companies. This course of business is profitable to both parties and not likely to be altered in the immediate future.

The increase in sales is now very slight from year to year, and there was very likely a decrease from 1905 to 1906.

Astoria. Complainant owns the stock and securities of a company which is putting up a gas manufacturing plant at Astoria, in the Borough of Queens.

The Court deducted $200,000 a year from its estimate of the complainant's net income for the year beginning May 1, 1906, on the theory that it would have an increased demand for one billion cubic feet and would cease buying three billion cubic feet from the companies whose gas it had been previously buying, would buy it from Astoria at a higher price. This was a theory invented by the Court and questioned by both sides on a rehearing, but adhered to. It was founded on various misapprehensions. The four billion cubic feet would be the total capacity of the Astoria plant for an entire year. The plant did not commence producing until the year was seven months gone. It was uncompleted when the testimony closed two months later still. It was even then supplying but a fraction of the amount customarily purchased. The proof also showed that complainant could put the new supply to a more profitable use than by substituting it for the gas previously purchased; and it indicated a decrease rather than an increase in sales for 1906.

Specification of Errors.

While believing that, if it were customary for this court to analyze all the evidence and review all the findings of the court below, its decision would be modified in other respects also, we have confined our assignment of errors to certain particulars wherein it seems to us that the court below has very clearly departed from the general principles that should guide a court of equity in a controversy like this. We have not assigned error to any rulings upon conflicting evidence, except (1) so far as it seems to us that the court was bound by the rules governing this class of controversies to follow the testimony for the state, or (2) where the complainant's witnesses adopted an erroneous basis of valuation, or (3) where the valuation was contradicted by complainant's own admissions, or (4) where the testmony in support of it was clearly and substantially improper as well as incompetent.

Besides the general assignments of error (I *e*, XI, XIII, XVI and XVII) we specify particularly the following (the errors being al assigned to the final decree, the paragraphs refeired to being paragraphs of that decree, pp. 435-439):

I. * * * * * * * * *

(*a*) Because the record loes not contain sufficient evidence to show whether or not the price of eighty cents per thousand cubic feet for gas, permitted by said statute, afforded a sufficient rate of return upon the capitalization of any of the other companies doing business in the same territory with the complainant, or upon that of a company well located and equipped, economically nanaged and not overcapitalized, but the case was decided on

the theory that if a statutory maximum price does not afford in the opinion of the court a sufficient rate of return upon the present capitalization of a particular company doing business in the territory, the statute is void as to that company, irrespective of its effect upon the other companies doing business therein, or upon a company well located and equipped, economically managed and not overcapitalized.

(*b*) Because the record does not contain sufficient evidence to show the reasonable and necessary operating expenses of the complainant, evidence of its actual disbursements during the period from November 1, 1904, to December 31, 1905, inclusive, supplemented in part only by experience of other periods, being insufficient for that purpose.

(*c*) Because the capitalization upon which the court's calculation is based is an estimate of present value, or of cost of reproduction, or of partly present value and partly cost of reproduction, not limited to the cost of complainant's property, or to the amount actually invested as capital by complainant and its predecessor companies.

(*d*) Because, it is accompanied by no condition that the complainant reduce its rate to such sum as the court finds to be constitutional.

* * * * * * * * *

II. In fixing (Paragraphs I*a*, II) the valuation of the portion of complainant's "real estate" actually and necessarily employed by it in its gas business at $11,985,435 (it appearing that its plants, mains, services, and special franchises are not included in its real estate as such term is used in the decree); said valuation being excessive for each of the following reasons:

(*a*) It is in excess of the original cost of

such real estate to the complainant and its predecessor companies.

(*b*) It is in excess of the amount required for complainant's gas business upon the basis of cost of reproduction.

(*c*) It duplicates in part the valuation given by the court to the plants, since it could not be realized until the plants thereon were removed.

(*d*) In estimating value the court adopts valuations given by testimony for the complainant, whereas the valuations testified to by unimpeached expert witnesses for the defendants, as well as complainant's own book values, and those stated by it in its Tax reports, were lower.

III. In finding (Paragraphs I *e*, II) that the valuation of the intangible special franchises of the complainant is at least the sum of $12,000,000, whereas

(*a*) The complainant owns no special franchises not terminable at the will of the State of New York or of the City of New York.

(*b*) The franchises claimed by it, if owned, are not proper subjects of valuation for the purpose of ascertaining its capitalization.

(*c*) The record does not sustain the valuation given.

IV. In finding (Paragraph I *h*) that the sum of $1,865,717.43, therein stated, represents more than a normal profit upon the volume of purchased gas, and in particular

(*a*) In finding that the amount paid by complainant to other companies for the same was paid under temporary and expiring agreements, whereas only a part of said gas was supplied under said agreements, and whereas said agreements did not expire until after the termination of the year beginning May 1, 1906; and

(*b*) In finding that said amount did not include any reasonable recompense or return upon the value of the investment required to produce said gas, which finding is not supported by the record.

V. In finding (Paragraph I *h*) that while the total net income for the year beginning May 1, 1906, would remain the same upon the basis of the prices charged for gas during the calendar year 1905, yet if the price for gas were reduced as provided by the statute of 1906 and by chapter 736 of the Laws of 1905 the net income of complainant for said year would be reduced to the sum of $3,024,592.45, on the ground that such finding is speculative and not supported by the record; and, in particular also

(*a*) In finding a probable increase in sales of gas tending to a reduction as aforesaid.

(*b*) In finding a probable increase in cost of gas obtained from other companies, leading to such reduction.

(*c*) In finding a probable change in the source of manufacture of some portion of such gas, leading to such reduction.

(*d*) In overlooking the decrease in "Expenses" due to the reduction in the complainant's special franchise tax, payable to the State of New York, which would result from the diminution of its net profits through reduction of its rate for gas, said special franchise tax item being included by the court in the "Expenses" of 1905 to the amount of $406,909.23, as shown by the Master's report.

VI. In failing to make an express finding as to the present existence of the franchises claimed by complainant by derivation from the following corporations respectively (such failure in the case of each of such companies being separately assigned for error), where-

as the court should have found that as to each of said franchises the complainant is no more than a holdover occupant, whose right of occupancy is terminable at the will of the State of New York or of the City of New York;

(*a*) The New York Gas Light Company.

(*b*) The Manhattan Gas Light Company.

(*c*) The Municipal Gas Light Company; and this alleged franchise was at all times invalid on account of lack of authority in the Mayor, Comptroller and Commissioner of Public Works to grant it.

(*d*) The Metropolitan Gas Light Company.

VII. In finding (Paragraph I *h*) that the following franchises claimed by complainant exist and are owned by it and are sufficient to meet all its requirements (such finding in the case of each of such companies being separately assigned for error), whereas

(*a*) The alleged franchise claimed by derivation from the Anthracite Gas Lighting and Heating Company through the Knickerbocker Gas Light Company was invalid on account of lack of authority in the Board of Aldermen to grant it, and the alleged assignment thereof to the Union Gas Light Company was also invalid for lack of authority to assign it, and said alleged franchise in any case expires on September 17, 1913.

(*b*) The franchise claimed by derivation from the so-called State Grant through the Knickerbocker Gas Light Company was not assignable to, and did not even purport to be assigned to, complainant or either of its alleged predecessor corporations, and said franchise did not cover any part of the City of New York, Borough of Manhattan, south of 79th Street.

(*c*) The franchise claimed by derivation from the Harlem Gas Light Company expired February 1, 1905, and as to that franchise

complainant is but a holdover occupant, whose right of occupancy is terminable at the will of the State of New York or of the City of New York, and said franchise did not cover any part of the City of New York, Borough of Manhattan, south of 79th Street.

VIII.—In finding (Paragraph II) the valuation of the complainant's plants actually employed in its business of manufacturing and supplying gas to be $15,500,000; said valuation being excessive, being based upon an estimate by complainant's witnesses of the cost of reproducing the plants as they now stand, instead of the lesser cost of replacement with plants of more modern character, which would perform equal service, and being greater than the cost thereof, and than the value thereof as stated by it in its tax reports.

IX.—In finding (Paragraph II) the valuation of complainant's mains to be $12,636,000, said valuation being excessive for each of the following reasons:

(*a*) It is in excess of the original cost of such mains to the complainant and its predecessor companies.

(*b*) In estimating value the court adopts the highest valuations given by complainant's witnesses, which valuations are greater than other valuations previously given by said witnesses and than complainant's own book valuations, and than the valuations stated by it in its tax reports.

X.—In finding (Paragraph II) the valuation of complainant's services to be $1,994,000, said valuation being excessive for each of the following reasons:

(*a*) It is in excess of the original cost of such services to the complainant and its predecessor companies.

(*b*) In estimating value the court adopts the highest valuations given by complainant's witnesses, which valuations are greater than other valuations previously given by said witnesses and vastly greater than complainant's own book valuations, and than the valuations stated by it in its tax reports.

XII.—In finding (Paragraph III) that the lowest rate of return which can be considered legislatively fair, just or reasonable, upon the value of the property employed by complainant in the business of manufacturing and supplying gas, is six per cent.

XIV.—In finding (Paragraph IV) that compliance with the requirement in the statute of 1906 and in chapter 736 of the Laws of 1905 as to pressure is commercially impossible under the rates for gas prescribed therein.

XV.—In finding (Paragraph V) that complainant has no adequate remedy at law for the injury which would result from the threatened enforcement of the statute of 1906 and that such injury would be irreparable; whereas complainant would have an adequate remedy at law as against the enforcement of said act by these appellants, the members of said Public Service Commission, by defense to any application brought by them in the courts of the State of New York for a mandamus or injunction to compel compliance; complainant's remedy as against the enforcement of penalties (as to which these appellants have no right, duty or interest), if said penalties are so great as to render proceedings for their enforcement at present inequitable, being by injunction against the enforcement of the clause concerning penalties, said clause being separable.

The city's assignments of error. As the City of New York has filed a much larger number of assignments of error, a paragraph seems to be necessary as to them. They mainly consist of assignments directed to language in the Master's report. We do not understand that it is necessary, in a reference of this kind (if anywhere) to assign errors to a Master's report (see p. 160, *infra*). We understand the assignments to be properly directed either to the decree or to important rulings upon questions of evidence. This report is not in a form adapted to the raising of questions thereon by exception or assignment. The proper practice seems to us to be like that of the courts of many states, where the judge or referee writes an opinion, not subject to exception, and files also a series of separately stated and numbered findings of fact and of law. The Master here has hopelessly mixed opinion and findings all up together. The city has raised various questions which we have not raised, because we have confined ourselves to questions which could be passed upon without weighing the testimony of witnesses in the ordinary sense of the term, as well as which involved each a very large amount of money. Our failure to raise such inquiries as, for instance, the cost of oil, should not be taken as indicating a difference in opinion between ourselves and the city upon that subject. We disagree with the city at some points, however, as to what the Circuit Court has actually held; the city conceding that it has held adversely to us, while we understand that it has held partly if not wholly in our favor, as for instance the Eleventh assignment at page 449. Thus the Ninety-ninth assignment, at page 472 (see pp. 204, 252-3), states in effect that

the court sustained a train of reasoning based on the assumption that complainant claimed its net earnings on gas sales only to have been in round figures $4,588,000 in 1905. The Master's sentence is merely *arguendo*, for the purpose of an illustration. The court does not consider the matter, and actually estimates the net income from gas sales at $5,891,597.45 (p. 407). We also disagree with the city at some points as to what the facts actually are. Thus in the Thirteenth assignment, at page 450, the city takes the position that the $7,781,000 item of 1884 had a relation to the market prices of the stocks of the constituent companies; a position which we have shown to be untenable, and which was opposed by the Attorney General as well as ourselves before Judge Hough.

ARGUMENT.

I.

The questions raised by this assignment of errors are all properly cognizable by this court.

We are of course aware that as a general rule this court does not reverse rulings of the Master which have been confirmed by the Circuit Court, upon questions as to which there is a conflict of testimony.

In a *consent* reference indeed, such as those under consideration in Kimberly *v.* Arms, 129 U. S., 512, 523-5, and Davis *v.* Schwartz, 155 U. S., 631,

636-7, the Master's report is equivalent to that of a referee, or to the special verdict of a jury, or to findings under Rev. St. § 649, and therefore are reviewable only in the most limited sense.

In ordinary references to a Master the rule, and the exception thereto, are stated in Tilghman *v.* Proctor, 125 U. S., 136, 149, and Callaghan *v.* Myers, 128 U. S., 617, 666-7, to be that

> "the conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part."

Here, as will hereinafter appear, the Master and the Circuit Court have persistently overlooked the weight of the burden of proof that rests upon a complainant in a case of this nature, and indeed frequently overlooked the burden of proof altogether, or rather assumed that it was upon the defendants. Hence it is submitted that their findings, so far as in complainant's favor, are not entitled to any favorable presumption at all.

We do not discuss the voluminous exceptions to the Master's report, because we do not understand that exceptions are necessary to the various reasonings, illustrations and computations of a Master in a reference like this one. This is not like the ordinary reference to a Master on an accounting, where he has a large number of separate and independent questions to pass upon. Here there was but one ultimate question of fact before him, namely, "Under the conditions existing on May 1, 1906, what rate of return can be earned, at the rate of 80 cents for gas, by a company reas-

onably capitalized and properly equipped and managed?" Every other question was evidential, not ultimate.

The points raised by our specification of errors against the valuations which have been confirmed by the court below may be classified as follows:

(*a*) Either the property of the complainant is valued upon a wrong basis (I*c*, II*a*, *b*, VIII, IX*a*, X*a*),

(*b*) Or the same value is counted twice (II*c*),

(*c*) Or the court has followed complainant's witnesses in points where it was bound, according to the legal burden of proof, to follow those of the state (II*d*, III*c*, IX*b*, X*b*),

(*d*) Or the testimony is too speculative to be considered (III*c*, IV, V*a*, *b*, *c*),

(*e*) Or it is contradicted by complainant's own admissions (VIII, IX*b*, X*b*, XIV),

(*f*) Or an item is omitted from the calculation (V*d*).

In main, these specifications of error may be defined as a demurrer to certain of the complainant's evidence.

II.

Complainant has an adequate remedy at law, and there is therefore no equity in the bill.

This defense is duly pleaded in the answer of the state (p. 54). But the court will dismiss in such a case, although the defense is not pleaded

(Allen *v.* Pullman Palace Car Company, 139 U. S., 658).

A simple allegation that a statute is unconstitutional is not sufficient to give jurisdiction to equity, even if the allegation be true. This is no exception to the rule that equity can only be resorted to when there is no adequate remedy at law (Cruickshank *v.* Bidwell, 176 U. S., 73; Indiana Manufacturing Co. *v.* Koehne, 188 U. S., 681, 684).

This is unmistakably clear as regards the Public Service Commission and the City of New York. The only thing which the Public Service Commission can do to the complainant is to bring an action of mandamus or for an injunction under the New York Code of Civil Procedure. To either of these forms of action the constitutional objection could be interposed as a defense. The question could then be tried out in the New York State courts under the protection of the constitution of that state, which does not permit (except by consent) that the testimony should be taken before one officer while the decision is made by another (New York Constitution, Art. VI., § 3). There could not be any multiplicity of suits, or other hardship calling for equitable relief.

Complainant's case as against the City of New York is in no better position. It depends entirely upon the statute of 1905. There could be no multiplicity of parties. The statute applies to no other consumer but the city. The city, on the other hand, has no interest in or function in respect to the statute of 1906, and is not enjoined in respect thereto by this decree. It is not claimed to be insolvent. The question would naturally arise in the state courts by the com-

plainant suing the city upon a *quantum meruit* for its gas bill. The city would defend by basing itself upon the statute of 1905, and the company would rebut by claiming that statute to be unconstitutional. The question would then be tried out according to the state practice. Complainant would render no bill to the city until it was ready to sue. Thus, if it failed in its suit, it would suffer but one $1,000 penalty.

The suit can not be maintained on the ground that it prevents *multiplicity of actions* by private consumers. None of them were made parties, in which respect among others this suit differs from that under consideration in *Ex parte* Young, 209 U. S., 123, 129, which joined "individual defendants representing the shippers of freight upon the railroad." Moreover, that case, as well as Smyth *v.* Ames, 169 U. S., 466, 469, 517-18 (referred to by Judge Hough at page 422 of the record) were stockholders' suits, thus basing themselves upon an independent ground of equitable jurisdiction. Judge Lacombe expressly excludes suits by individuals from the scope of the injunction (pp. 136, 143), and their suits are actually now pending in large numbers in the state courts (See Richman *v.* Consolidated Gas Co., 114 App. Div., 216, 224; 186 N. Y., 209). The rights of A and B as against C can not be affected by C's suing D to declare that there are no such rights, even if D is given some power and duty to protect them. A and B must be sued personally, or through some representative.

Judge Jones in Alabama has announced a novel principle of equity jurisdiction, namely, that the state executive authorities represent each citizen for the purpose of an action such as this, even if the legislature has repealed all statutes giving

them any power or duty to protect him, and left the entire enforcement of its maximum rate laws to the citizen himself. He treats the suit as *quasi in rem,* although citing no authority (Central of Georgia Ry. *v.* Railroad Comm. of Ala., 161 Fed. Rep. at pp. 981-2). No such doctrine was relied upon by Judge Lacombe. It has no basis in anything heretofore decided, or in any principle of equity procedure. It is unnecessary because the complainant, if it have otherwise a proper case for injunctive relief, may get jurisdiction of the parties by joining some of the citizens to represent the rest, as illustrated in the Young case. Judge Jones' innovating spirit is in striking contrast with Judge Hough's conservatism when the state asked a new application of the rules of procedure, as discussed in the last point of this brief.

It is of course a convenience to have a single test case made, but we do not understand that mere convenience, unaccompanied by other bases of equitable jurisdiction, is enough to justify the interference of the Chancellor, although it is a good reason for interfering if there are such other bases in the record.

As to the Public Service Commission complainant may urge, however, that it succeeds to certain of the functions which at the time when this suit was brought pertained to Julius M. Mayer as Attorney General of the State of New York, one of the original defendants; and that if equity had jurisdiction over him it retains that jurisdiction over his successors, notwithstanding the division of his functions between the present Public Service Commission and the present Attorney General. It may be further contended that one of his

functions (namely, the one retained by the present Attorney General), is the bringing of civil actions for penalties, and that that involves hardship and multiplicity of actions, and is therefore a ground of equitable relief.

Hence we proceed to discuss the penalty aspect of the case, as to which Judge Lacombe and Judge Hough seem to us to have fallen into a clear error through misconstruction of the state law upon that subject.

The penalty clause (which is misprinted at p. 138 of the record) is as follows:

> "§3. Any corporation, association, copartnership or person violating any provision of this act shall forfeit the sum of one thousand dollars for each offence *to the people of the state.*"

Judge Lacombe indeed, at pages 138 and 139 of the record, refers to another and more drastic penalty clause, contained in section 21 of the old Gas Commission law. This is immaterial for various reasons. It is indisputably unconstitutional in itself, for the reasons stated by the learned judge. It is therefore a nullity (Norton *v.* Shelby County, 118 U. S., 425, 432). It was severable even from the rest of the old law (Reagan *v.* Farmers' Loan & Trust Co., 154 U. S., 362, 394-6), as was stated orally from the bench by the Chief Judge of the State upon the argument of the Saratoga Gas case, 191 N. Y., 123, in which case the rest of the old law was held unconstitutional, so far as interests us here. So far as the consumers in New York City are concerned, the clause was never applicable, because (as a penalty clause in an older and general act) it was *pro tanto*

superseded by the later and special act (United States *v.* One Bay Horse, 128 Fed. Rep., 207). It was a sporadic legislative freak, never seriously treated and never repeated, and altogether contrary to the general course of the legislation of our state.

Returning then to the penalty clause above quoted from the statute of 1906, in the first place it is clearly separable from the rest of the statute, under the Reagan case, *supra.* Hence whether it is constitutional or unconstitutional in itself cannot be material in deciding whether a court of equity has jurisdiction. If it is unconstitutional, that is a defense to any action that may be brought by the Attorney General or the District Attorney in a state court to collect penalties; and if the state court decides erroneously, a writ of error lies to this court from its decision.

This brings us to the position considered by the court in *Ex parte* Young, 209 U. S., 123, 147-8, 163-5; namely, whether prosecutions for penalties would be so harassing, and produce such multiplicity of litigation, and risk of such enormous loss, that equity has the right to interfere although the penalty clause in itself be valid. It may be suggested that if the law be upheld the injunction will be dissolved, and the penalties will then become collectible from the beginning, so that unless the whole statute be void the injunction is no benefit. But this suggestion seems to have been overruled by the court in the Young case, and the whole question is an academic one here, as we shall now proceed to show.

The distinction between this case and *Ex parte* Young is in the penalty clause itself. Whether or not penalties are multiplex and harassing de-

pends upon the construction of the clause which provides for them. Judge Lacombe and Judge Hough have construed the penalty clause in the present statute, and if the construction which they have given it were correct, and the assertion of a constitutional right mulcted to the extent of $390,000,000 a month, not even to indemnify the individual consumers against costs of litigation, but as a fine into the state treasury, then it would indeed be an enormity; and this court (209 U. S., 147) evidently supposing that construction to be the admitted and intended one, have referred to the present case as a striking example of undue penalties. But that construction has never been contended for by the state, in this action or out of it. On the contrary, it has been expressly disavowed. Our contention is that it was manifestly wrong, and that neither of the learned judges would have permitted it if the statute had been concededly constitutional and the company had come before him merely on the question how many penalties it must pay.

It ought to be sufficient to refer to the general rules of construction that a statute should never if possible be construed so to be unconstitutional or so as to be absurd (Oates *v.* National Bank, 100 U. S., at p. 244; Grenada County *v.* Brogden, 112 U. S., at pp. 268-9). But there are state decisions in point.

In Cox *v.* Paul, 175 N. Y., 328, the statute under consideration, which gave to stockholders a right of examination of corporate books, provided a penalty for "*any* refusal to allow such books to be inspected" (Stock Corporation Law, § 53). Plaintiff made three applications. One of them was refused by the secretary, the other two by the president. In the lower court he recovered one penalty against the secretary, two against the

president, and three against the corporation. The Court of Appeals reduced the judgments to one penalty as against each, drawing a distinction between the imposition of a penalty for "*any* refusal" and an imposition for "*each and every* refusal" (p. 330), and saying "that this court is committed to the doctrine that a party suing for penalties can recover but for one violation or one default prior to the commencement of the action."

In Topham *v.* Interurban Street Railway Co., 96 App. Div., 323, 325, the question arose upon the "free transfer" provision relating to street railways in New York City, which was accompanied by a penalty provision for the benefit of passengers to whom free transfers were refused. The statute provided a penalty "for *every* refusal." This was held by the intermediate appellate tribunal of the state to be equivalent to the words "for *each* offence," words which had already been held by one of the other intermediate appellate courts to permit recovery of cumulative penalties, and distinguishing Cox *v.* Paul, *supra.* While the plaintiff's judgment was reversed upon other grounds, the judgments, similar in this respect, in Griffin and Scudder against the same defendant, were affirmed (96 App. Div., 340, *id.*, 636). The Court of Appeals however modified both these judgments, reducing their amount so as to permit a recovery for one penalty only, following Cox *v.* Paul and other previous cases, and holding the words "for every refusal" to be no better than the words "for any refusal" (179 N. Y., 438, 448-9). Motions for reargument were entertained, but resulted only in adherence to the decision already made. Referring to a case where cumulative penalties had been sustained under a statute im-

posing a penalty "for each offence," it was indeed remarked "that 'every' is not always *necessarily* the synonym of 'each'" (180 N. Y., 538); but if the present statute had said "for every offence" instead of "for each offence", the meaning would not have been different.

Two of the New York precedents cited by the Court of Appeals in the Griffin case are cited and approved by this court in *In re* Snow, 120 U. S., at p. 286; and many other cases are there cited to the same point; and the ruling has been followed in the New York courts in the later case of United States Condensed Milk Co. *v.* Smith, 116 App. Div., 15, affirmed without opinion at 191 N. Y., 536.

It is therefore clear that only one penalty at a time could be sued for by the Attorney General or the District Attorney for failure to observe the requirements of the statute of 1906 as to candle power, or as to pressure, or for overcharging the consumer. There is no allegation or proof indicating that the Attorney General or the District Attorney threatened to bring an unreasonable number of penalty actions, or that there was any reason to suppose that either of them would do so.

But even if they should sue every month, the total penalties recoverable for overcharges from the beginning of the controversy up to the date of this argument would not have amounted to $30,000—surely a most moderate penalty in a business of this magnitude. For the penalty would not be $390,000,000 a month, but $1,000 a month, for sending out the 390,000 monthly bills to private consumers, or for receiving payment for the same. Judge Lacombe assumes that each constitutes a separate offence, punishable by a separate penalty; an assumption based upon the remarks of Mr.

Justice Brewer in the Cotting case, 183 U. S., at pp. 99-102, but which remarks were made tentatively, and not after hearing argument (p. 102). *The assumption might be true if the penalty were recoverable by the individual to whom the bill is sent, to redress the violation of his rights and pay his expenses of litigation in asserting them; but it is not. It is recoverable by the state, and is for the purpose of punishing an offence, although one not even amounting to a misdemeanor.* There is no presumption that a penalty is multiplex when it can equally well be construed as single. On the contrary, no principle of statutory construction is more familiar than the strictness of construction of a penalty law (France *v.* United States, 164 U. S., 676, 682-3; Bolles *v.* Outing Co., 175 U. S., 262, 265; United States *v.* One Bay Horse, *supra*). A construction involving 390,000 penalties in such a case as this would be abhorrent, and we venture to say that if this case came before a court as a simple case of construction of the penalty clause, there would be no hesitation in saying "The fault is the same, whether the company may happen to have 9,000 or 90,000 or 390,000 customers. Under the rules of construction of penalty laws, you must show me some reason for it, before I adopt a construction that puts so enormous a sum into the state treasury without benefiting a single consumer."

In United States *v.* Patty, 2 Fed. Rep., 664, the defendant was indicted in the first count, for sending on each and every secular day from November 1, 1879, to February 10, 1880, a certain unlawful communication in large quantities through the United States mail; in the second count, for sending 100 unlawful printed circulars through the

mail; and in the third count, for so sending 500 circulars. A motion was made to quash the indictment for duplicity, on the ground that the first count charged 45,000 offences, the second count 100, and the third count 500. That the case was well and fully argued is a safe inference from the fact that L. S. Dixon was counsel for the defendants. Judge Dyer, in denying the motion said (p. 666):

> "I think there can be no doubt, although it might be, under this statute, an offence to deposit a single letter or circular concerning a lottery in the post-office to be carried by mail, that if a number of deposits are charged as made at or about the same time, so that they consist of a single act, or of successive stages in a single transaction, then we may properly say that one offence has been committed."

Can there be any doubt about this? Can a man be indicted 10,000 times for stealing 10,000 peanuts? Or for printing a 10,000 edition of a copyrighted book?

A packer was convicted of shipping at an unlawful rate 67 tierces of oleo oil from Kansas through various states to New York. "This is a single continuing offense, not a series of offenses," as this court said (Armour Packing Co. *v.* United States, 209 U. S., 56, 77). The *innuendo* was indeed that it was not a single offense in each state. Even the Attorney General did not claim that it was 67 offenses. Could he have done so?

In United States *v.* Eagan, 30 Fed. Rep., 498, Judge Thayer held on demurrer for duplicity that placing a number of fictitious names on the regis-

tration list at the same time and place constitutes but one offense.

In Taft *v.* Stephens Lithographic Co., 38 Fed. Rep., 28, plaintiff sued as informer under the copyright law to recover $1,000,000 for printing and circulating 10,000 pirated copies of a copyrighted chromo. Judge Brewer held that "when the printing of many copies is a single continuous act, only one offense is committed thereby," citing the Eagan case.

The principle is indeed as old as Creeps *v.* Durden, Cowp. 640, where a baker had been convicted of 4 crimes for selling 4 small hot loaves of bread on a Sunday. Lord Mansfield said: "It is but one offense, whether longer or shorter in point of duration; so, whether it consist of one, or a number of particular acts. The penalty incurred by this offense is five shillings. There is no idea conveyed by the act itself, that if a taylor sews on the Lord's day, every stitch he takes is a separate offense; or if a shoemaker or carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offenses."

In Central R. R. Co. *v.* Green, 86 Pa. St., 427, the railroad company excluded at the same time two colored people. Each recovered the $500 penalty for exclusion "of any person or persons on account of color or race"; but one penalty only was allowed on appeal.

See also Gimbel *v.* Hogg, 97 Fed. Rep., 791, 793; United States *v.* Central Vt. Rway., 157 Fed. Rep., 291, 293; Parks *v.* Railway, 13 Lea, 1.

Hence the Attorney General and District Attorney could institute but one proceeding every month for the $1,000 penalty. But even if they could sue every day, the penalty would be but $365,000 a year, and is that an amount sufficient to warrant equitable interposition of a Federal court when the state court has not been applied to, and when the total demand of the company is $13,000,000, and the sum in controversy $2,500,000?

Nor is it alleged or proved that the Attorney General or District Attorney threatened to be unreasonable about it. The bill of complaint does not even charge distinctly that the statute can bear the construction which Judge Lacombe and Judge Hough have put upon it. It only alleges (p. 18) that—

> "*If* it should be held that every charge in excess of the 80 cent rate is a violation of the provisions of Chapter 125 of the Laws of 1906, for which a forfeiture of one thousand dollars should be imposed, and your orator should make such a charge in excess of the 80 cent rate each month to each of its consumers, numbering, as hereinbefore stated, over 390,000, the aggregate of the penalties so incurred during one year would amount to over $4,680,000,000 and would be over fifty-four times as great as the value of all the tangible assets and franchises belonging to your orator," [etc.]

It is moreover settled in the New York courts that a succession of actions for penalties, when only one penalty can be recovered in each action, is not sufficient multiplicity of litigation to give jurisdiction to equity (Wallack *v.* Society, 67 N. Y., 23, 29); and we respectfully submit that this

is a reasonable ruling, which should be followed in the Federal Court. In Mississippi Railroad Commission *v.* Illinois Central Railroad Co., 203 U. S., this point was not brought to the attention of the court, and the answer did not plead lack of equity. That the New York legislature construed this penalty clause as we do is indicated by the similar clause in the Public Service Commission Law (N. Y. Laws of 1907, Ch. 429), under which our clients hold their office. Section 73 of that law, in providing for the enforcement of lawful orders of the Public Service Commission, imposes this same penalty of "not to exceed the sum of one thousand dollars for each offence"; but follows it up with the following significant explanation, evidently in view of the decision in the free transfer cases:

> "Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. * * * In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture."

The section then proceeds to provide, as to remission of penalties, that—

> "if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting the suit, action or proceeding in the courts to set aside such order, the court

> shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding."

Another example of the language used by the New York legislature, when such a result is intended as that supposed by Judge Lacombe in the present case, is shown by People *v.* Koster, 121 App. Div., 852, 854.

III.

Assuming equity to have had jurisdiction, it should not have been exercised, but jurisdiction should have been declined and the controversy remitted to the state courts.

In *Ex parte* Young, 209 U. S. at pp. 166-7, this court said:

> "Finally it is objected that the necessary result of upholding this suit in the Circuit Court will be to draw to the lower Federal courts a great flood of litigation of this character, where one Federal judge would have it in his power to enjoin proceedings by state officials to enforce the legislative acts of the State, either by criminal or civil actions. To this it may be answered, in the first place, that *no injunction ought to be granted unless in a case reasonably free from doubt.* We think such rule is, and will be, followed by all the judges of the Federal courts."

Even had Judge Hough's findings as to ascertainable values been supported by a

preponderance of evidence, was he entitled to rest upon this, and then indulge in the speculative guesses upon which he founded this permanent injunction? Was he entitled to hold this to be "a case reasonably free from doubt"?

He finds a corporation doing an annual business which, after paying operating expenses, would have netted during the past year about $3,235,000 at the 80 cent rate (p. 407). He figures its tangible assets at about $47,830,000 (p. 423), upon which the rate of return would therefore be 6¾%. But without any definite figures he speculates, first, that the lower rate will increase the sales; second, that present arrangements (which are all under complainant's own control) will be altered in such a way as to increase the expense of the business; and third, without any definite evidence about it, that $200,000 will be the net extra expense of the new business; and this sum he accordingly deducts (pp. 406-8, 425-8). This reduces the net income item to about $3,025,000 (p. 430). He then takes an alleged intangible franchise item, as to whose value there is no competent evidence, puts it at $12,000,000 "in a finding opposed to the settled opinion" of himself (p. 425), and by adding this item gets the reduced income figure almost down to 5%. He then holds this figure confiscatory, citing as his authority a judge in a San Francisco water case (p. 418), who said that a 5% return should not be held confiscatory (124 Fed. Rep., at pp. 598-9, 601). And yet this is one of the oldest and most assuredly profitable establishments in the New World. It is, in his own words, "as nearly a conservative an investment as any private manufacturing enterprise can furnish" (p.

409); and its return, after all of his speculative reductions, is within one per cent of what this court had held "more than is necessary" for the risky business of a California irrigation company (192 U. S., at pp. 213, 216).

We respectfully submit that upon such a state of facts he should have dismissed the suit as not being one of so grave a nature as warrants the interposition of the Federal power in purely local affairs. The state courts are open. They can enjoin, as well as try mandamus cases. Had jurisdiction not been seized by the Federal court, the case would have been tried by a judge or referee in the state court,—by an officer with judicial powers, who could exercise some control over the proceedings, could confine the record within the limits of reason and intelligibility, and who would under the state constitution see and hear as well as decide.

The question is twofold.

It is in the first place a question between one man in a gown and three or more men without gowns; a question whether a judge is better qualified to pass on such a question than a commission, or a legislature and governor. We say "better qualified" because we are not here considering the subject of plain, mathematically demonstrable and indisputable violations of common right. We are considering questions of some difficulty, involving the weighing of testimony, the choice between different degrees of probability, the exercise of prophecy, and the application of business experience. We believe that the majority of thinking people, taking the general average rather than any particular case, would consider a

commission as the best qualified, a judge as the next best, and a legislature as the least. A commission generally is, and theoretically ought to be, a body of men chosen, so far as it is composed of lawyers, from the same class of material as the judges, including however members of corresponding rank and prominence from other professions or from the business world. It spends all of its time in studying the particular subject, and acquires both from independent study and from contact with the leading men of the railroad and gas and electric world a vast store of information as to practical as well as theoretical questions. Upon difficult questions, like those involving maximum rates, it is able to take plenty of time to decide. The judge on the other hand is no better a man than the commissioner when appointed. He is at least as busy a man, most of his time being taken up in the study of other questions. He can give but a limited time to the hearing of the case. When the number of hours allotted to each counsel is exhausted, counsel is cut off sharp and heard no more. He cannot even calculate beforehand how best to use the time allotted, for much of it is often exhausted in answering questions of the court about some minor detail. The judge then finds the voluminous papers on his desk, piled up among a mass of other papers equally pressing; and he has to decide without the knowledge and experience which had aided the commissioners. Upon questions of fact and discretion he is especially at a disadvantage. He is less likely to know which witness is lying, and is more apt to be misled by a false assertion of impracticability.

In the second place the question is between the State and the Federal judge. In this aspect it is

a question of comity and a question of public policy. It seems to be assumed by many financiers and many lawyers that only Federal judges are capable of deciding fairly in such a case. State judges are classed in with the despised commissioners and legislators. We respectfully submit that the judges of the state courts of this country should be accorded the same respect as the judges of the Federal Circuit and District courts, and that in matters of purely local interest the Federal Circuit and District judges should as a rule, out of comity, refrain from interposing; instead of leaving the state judges, as in this case, to exercise the comity and refrain from administering justice in their own proper sphere.

And municipal trolley lines and lighting plants are on a different basis in this respect from interstate railroads. Rate cases on interstate railroads involve interstate problems. It is often charged that the state is trying to load the expense of its local traffic onto interstate traffic, or onto the local traffic of other states. When a conflict is suggested between state and nation, or between two or more states, there is more reason for the Federal courts to interfere. It may be wise for Congress to enact further legislation for the protection of interstate as against local traffic, and put its execution in to the hands of a Federal tribunal, independent of the Fourteenth Amendment. But it is submitted that the Federal courts should be slow indeed to issue injunctions against the enforcement of state laws regarding the rates of fare or other details of management of local trolley lines or gas companies or electric light companies or water companies or irrigation companies. If the action of a state legislature or a

state commission is to be annulled or suspended by the fiat of a single man, it is submitted that in local matters it would be more in accordance with public policy to put that responsibility upon a man elected by the people of the state or appointed by its own governor, rather than upon a man appointed at Washington; that the traditions and the habits of local self-government should be observed as far as compatible with modern conditions; and that therefore the full jurisdiction of the Federal judiciary, like the full jurisdiction of the Federal executive and legislature, should be most cautiously and sparingly exercised in matters of purely local concern.

It is important not only to have cases decided right, but also to have them so decided as to inspire public confidence in the decision. Public confidence in such a decision, if the decision involves an overturning of the work of a state commission in which the community have confidence, is greater when reached after trial in open court than when the real trial is *in camera* before a Master of whose existence the people had been previously unaware. To one brought up under the New York constitution, which for sixty years past has guaranteed to the defendant in an equity suit the right to have his case tried in open court and decided by a judge who has actually seen the witnesses, the public feeling in this regard seems a natural one.

We submit that the action of the Federal court in this case has been unduly precipitate, and does not contrast well with the dignified posture of the state judiciary in deferring to the jurisdiction which the co-ordinate tribunal had stepped in front of them to take. In his unre-

ported Special Term opinion in Richman *v.* Consolidated Gas Co., Justice Leventritt said of this complainant "That it did not originally invoke State jurisdiction, where the same questions might have been passed upon, may be a matter of regret, but it is not one for condemnation, nor should it be permitted to influence the Court to disregard well-established principles of comity. * * * The Circuit Court has by its preliminary injunction taken unto itself the determination of the same questions that underlie these motions, and accepted practice, founded on very wise rules, forbids indirect interference by the State courts" (and see opinions on appeal at 114 App. Div., 216).

It may be asked why, after so strenuous a litigation and upon so voluminous a record, this court should be asked to remit the case and dismiss the bill upon a point that does not reach the merits of the controversy. Our answer is, that we do not think that the course of the proceeding before the Master was such as to bring out the full and fair merits of the defendant side of the case. We should prefer that the decision of this court should involve a ruling upon more specific propositions, but think that in no event can it be anything but a reversal and dismissal of the bill.

IV.

There is no unconstitutional or improper discrimination in fixing the 75 cent rate for the City of New York, while making the rate higher for other consumers within the same territory. Quite to the contrary, the rate for the city is unquestionably constitutional, irrespective of the fate of the private consumers.

This discrimination in price between gas furnished the municipality and gas furnished to its constituent members, the private consumers, is one of long standing, and was never before brought into court by the gas companies. The table of rates from 1897 down, in the Borough of Manhattan, under Chapter 385 of the Laws of 1897 (Record, p. 5264), and under the acts in question, is as follows:

	Consumer.	*City.*
1897	1.20	1.
1898	1.15	.97½
1899	1.10	.95
1900	1.05	.92½
1901-5	1.	.90
1905-6	1.	.75
1906	.80	.75

The complainant relied upon Lake Shore Railway *v.* Smith, 173 U. S., 684, where the Michigan Mileage Book Act was held unconstitutional because it discriminated in favor of married men against single men, and in favor of persons who could afford $20 investments against persons who could not; and this although the point was not

made on the part of persons discriminated against. That case is not an authority to the effect that a legislature cannot establish discriminations which are neither arbitrary nor unreasonable. This discrimination between gas furnished the inhabitants of the city in their corporate capacity and gas furnished them as individuals is one whose propriety seems self-evident, and is confirmed by the fact that it was so long acquiesced in by this complainant and its sub-companies. If the price of the gas bought by the municipality were raised, the taxpayers would have to pay the difference; and theoretically the consumers who were not taxpayers would pay their share by way of rent.

The character of the service is also different. The municipality burns of course considerable gas in its public buildings, notwithstanding the fact that in most of them the occupants lock up and go home at a pretty early hour; but the vast bulk of its gas is burned in the street. It is unmetered. Special services are specially paid for. As to all of the city gas, the companies are saved the risks and many of the annoyances involved in its dealings with the 390,000 individual consumers.

Quite to the contrary, the 75 cent gas law is constitutional under the principles which have been laid down by this court in the railroad rate cases, irrespective of the validity or invalidity of the subsequent 80 cent law. The gas furnished the city amounted in all to about 400,000,000 cubic feet (p. 5076). A reduction of 15 cents on this would amount to the sum of about $60,000. The total net income of the company under the old law is found by Judge Hough to be $5,891,597.45 (p. 407). Deducting the loss by reduction of the city's gas from

90 to 75 cents the total net income was still about $5,831,500 under the law of 1905, or nearly 10% upon Judge Hough's $59,831,435 capitalization. Thus the decrease in price to the city amounted only to a reduction of about 1% in the net receipts of the complainant, and left them still nearly 4% over the standard fixed by him.

Nor did the statute of 1905 require the gas company to furnish any of its gas at a loss. The company's only complaint is that this particular portion of the gas did not pay its full proportion of profit. Its cost is not claimed even by Mr. Addicks to approach 75 cents (pp. 231-2).

If the statute of 1905 was valid when passed, notwithstanding the very slight fractional deduction made in the net profits of the company, it of course could not be made unconstitutional by the passage of the subsequent 80 cent law. If that law is invalid the consumer loses the benefit of the reduction which the legislature intended for his benefit, but retains his share of the benefits of the earlier and previously constitutional act. For if the statute of 1906 were unconstitutional, it would be a nullity. It could not be void in itself and at the same time make a prior statute void *nunc pro tunc.*

Is it then a violation of the Fourteenth Amendment to the Constitution of the United States for a state to require of a public service corporation a certain service to be performed at a rate which, though affording a large margin over expenses of operation, does not pay its full share toward profit on capital? This question is answered by the authorities in the negative, and they go even so far as to sustain statutes that require certain services

to be rendered at a loss, provided the company is left on the whole with a fair profit.

This point is first noticed in the concurring opinion of Mr. Justice Harlan in Ruggles *v.* Illinois, 108 U. S., 526, 538, and is implied in the decision of the Wellman case, 143 U. S., 339. In both these cases the court was dealing with an act simply regulating passenger fares, and was not informed whether the railroad would not earn a sufficient return out of its freight.

In the Gill case, 156 U. S., 649, 665-6, this court held that a railroad company could not claim the right to earn a net profit from every part of its line.

In Smyth *v.* Ames, 169 U. S., 466, 541, it was indeed held that losses from low rates on local transportation could not be put upon the interstate business, but that was on account of lack of power in the state to cast a burden upon the latter class of business.

In San Diego Land Co. *v.* National City, 174 U. S., 739, 760, the court say that a case attacking rates must be decided by "looking at them in their entirety—and we cannot properly look at them in any other light."

The question was squarely presented for decision in Minneapolis & St. Louis R. R. Co. *v.* Minnesota, 186 U. S., 257. The railroads contested the rate fixed by the State Commission for the transportation of hard coal in carload lots. The company showed that the new rate, if applied to all the freight, would not pay operating expenses. This court said that the undisturbed rates for other merchandise "may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots"; that

a state comission may "reduce the freight upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and that the burden is upon them to impeach the action of the commission in this particular" (p. 267).

In Atlantic Coast Line *v.* North Carolina Corporation Commission, 206 U. S., 1, one step further was taken. The order in question directed the railroad to change its schedule so that close connection could be made with another railroad at a certain point in the afternoon of each day. Assuming that to run this train would result in a loss, the railroad's contention was that this established a case under the Fourteenth Amendment (pp. 23-4), relying on Smyth *v.* Ames. The latter case, and those preceding it, were distinguished however on the ground that they only involved a general scheme of maximum rates, and are inapplicable to a case "when the question is as to the validity of an order to do a particular act, the doing of which does not involve the question of the profitableness of the operation of the railroad as an entirety," relying on the Gill and Minnesota cases above referred to (p. 25). The court further say that a carrier may be compelled to furnish adequate facilities "although by doing so as an incident some pecuniary loss from rendering such service may result."

V.

The burden of proof is upon the complainant, and is so strong that it must show that the state authorities could not fairmindedly have come to the result which was reached.

From the first judicial assumption of the power to declare a statute unconstitutional, it has been uniformly held that every presumption is in favor of its constitutionality.

In the Gettysburg Park case, 160 U. S., 668, 680, the court said of an act of Congress:

> "In examining an act of Congress it has been frequently said that every intendment is in favor of its constitutionality. Such act is presumed to be valid unless its invalidity is plain and apparent; no presumption of invalidity can be indulged in; it must be shown clearly and unmistakably. This rule has been stated and followed by this Court from the foundation of the government."

The same rule holds with respect to a State statute. Thus in Sweet *v.* Rechel, 159 U. S., 380, 392-3; the court said:

> "But in determining whether the legislature in a particular enactment, has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid unless it can be clearly shown to be in conflict with the constitution. It is a well settled rule of constitutional exposition, that if a statute may or may not be, according to circumstances, within the limits of legislative authority, *the existence of the circumstances necessary to support it must be presumed.*"

In the final clause of this paragraph the Court follows the language of the Supreme Court of Massachusetts in Talbot *v.* Hudson, 16 Gray, 417, 422, which in turn adapted that of Chief Justice Shaw in Wellington, Petitioners, 16 Pick., 87, 96-7.

The presumption being in support of the defendants, and being so strong, it follows not only that the burden of proof is upon the complainant at every point, but that it is a burden to be lifted only by production of evidence of a peculiarly clear and convincing nature.

This court has ascribed to the findings of the Interstate Commerce Commission "the strength due to the judgments of a tribunal appointed by law and informed by experience" (Illinois Central R. R. Co. *v.* Interstate Commerce Commission, 206 U. S. 441, 454, and cases cited). The findings of a state railroad or gas or public service commission will doubtless receive the same ascription; and in the present instance, while the rate was finally fixed by act of the legislature, it was the same rate that had previously been fixed by a state commission after long investigation, and was higher than the rate recommended by an able legislative committee after the investigation of the year previous (p. 132).

It is not necessary to prolong the argument, because this court has recently considered in a series of cases the weight of the burden of proof which rests upon a corporation challenging a maximum rate fixed by state authority.

In San Diego Land Co. *v.* National City, 174 U. S. 739, 754, speaking by Mr. Justice Harlan, the court said:

"But it should also be remembered that the

judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless the case presents, *clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations* as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

In Chicago, Milwaukee etc. Railway *v.* Tompkins, 176 U. S. 167, 173, speaking by Mr. Justice Brewer, the court said:

> "The case must be a clear one in behalf of the railroad company or the legislation of the State must be upheld."

In San Diego Land Co. *v.* Jasper, 189 U. S. 439, 441-2, speaking by Mr. Justice Holmes, the court said:

> "In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. *It is enough if we cannot say that it was impossible for a fair-minded board to come to the result which was reached.*"

Applying the test thus established to this 80 cent rate, adopted after the Stevens-Hughes investigation of 1905 and the Gas Commission's re-

investigation of 1906, and not discussing for the present what this court would do if it were willing to "sit as a general appellate board of revision for all rates and taxes in the United States" (189 U. S. at p. 446), we proceed to inquire whether Judge Hough has upon each point of the discussion of this problem kept in view—

The test:

Could a fairminded board have sustained the defendants' contention upon this point?

The present decree is based upon findings made by a master with whose methods satisfaction is expressed (p. 391), except so far as they are specially disapproved; and all the Master's valuations as to items capable of anything approximating to an exact valuation have been adopted and confirmed without further discussion by the court. *But the Master considered the burden to be upon the defendants,* and to be so strong that their contentions are sustainable only if "so decisively settled for all purposes as to admit of no further question" (p. 164, foot); that complainant's title to property "cannot be adjudicated in this action," but must be conceded as to all property "occupied by complainant under a claim of title and used by it in connection with its business of gas making" (*id.*); that the burden is on defendants to disprove the necessity of complainant's real estate holdings, even if complainant did not see fit to prove the use to which they are put (pp. 165-6); that if the original cost of the complainant's real estate was relevant to the inquiry, the burden was upon the defendants to show it (p.

167); that the burden was upon the defendants to show that the franchises of the complainant had ever been attacked, if they were here to be claimed to be revocable (p. 192); that the validity of a state statute purporting to grant a franchise to the complainant "must be assumed for the purposes of the present proceeding" (p. 194, foot); that if complainant contradicts itself, however immorally, and the state has believed its less self-favoring statement, he may believe the other (p. 216); that complainant may be excused from adopting appliances required by statute when the evidence affords no sufficient basis for an estimate of the cost of their installation (p. 250).

So too the Judge, while he refers to the true rule as to burden of proof, forgets it in his action. Thus he allows land to be capitalized as to which "very serious doubts are entertained", because he is trying "to reach an average favorable to the complainant" (p. 423).

It is submitted that both the Judge and the Master have been willing, if we may use the language of Chief Justice Marshall in Fletcher *v.* Peck, 6 Cranch at p. 128, to set aside a statute "on slight implication and vague conjecture."

Corollaries of the rule.

The rule in the Jasper case has the following corollaries, whose application to various points in the present case will be discussed elsewhere in this brief.

(1) As between two unimpeached and qualified expert witnesses, the valuations most favorable to defendant must be adopted.

(2) Under the well settled rule that the testimony of experts or employees is not binding (as to which very familiar rule of evidence we need only cite Chicago & Grand Trunk Railway Co. *v.* Wellman, 143 U. S. 339), a statute cannot be declared unconstitutional upon such testimony, unless the state admits its correctness.

(3) Complainant is entitled to no higher valuations than those which it has itself fixed under oath.

(4) Items incapable of exact valuation must be put down at the minimum amount that a fair-minded state board could fix.

(5) The judgment of the state must be taken as to the rate of return to be allowed, so long as that rate of return is above the limit of confiscation. Above that limit responsibility must be left with the state; and whatever power of judicial review there may be is confided to the state judiciary.

VI.

The following additional rules are applicable to the determination of the maximum rate question:

(1) *At least as to all items of capitalization over and above the actual cost of the property, the test must be this: Is it logical or equitable that the consumer should pay more cents per thousand cubic feet of the gas he burns because of the inclusion of this item?*

The present case is the first in which this court has been called upon to deal with a case of *appreciation*—with the case of a corporation which can win only by proving a capitalization vastly greater than its investment—which can win only upon unearned increments. All of its discussions of rate questions have been in cases where the company has fought for the standard of actual cost, and where the state has fought for the standard of actual value—where the case was one of *depreciation.*

While the language of this court in these discussions has been general in form, we understand it to have been particularly directed to the facts in each case respectively, and that it should be read in the light of those facts (Cohens *v.* Virginia, 6 Wheat 264, 399; Carroll *v.* Lessee of Carroll, 16 How. 275, 286; Woodruff *v.* Parham, 8 Wall. 123, 138; Barney *v.* Rickard, 157 U. S. 352, 364; Pollock *v.* Farmers' Loan & Trust Co., *id,* 429, 574-5).

In all these discussions it has been recognized that the subject cannot be treated from the standpoint of the company alone, any more than from the standpoint of the consumer alone, but it has not been necessary to analyze this out further than to hold that the company can rely neither upon its nominal stock and bond capitalization nor upon its original cost of construction, if these standards would result in a rate unreasonably high from the consumer's point of view.

In Covington Turnpike Co. *v.* Sandford, 164 U. S. 578, 596-597 the court said:

> "It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an

> inquiry as to what is reasonable and just for the public * * *. In short, each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

In Smyth *v.* Ames, 169 U. S., 466, 544, 546-7, discussing the company's contention that it was entitled to earn operating expenses, fixed charges, and some dividend, the court said:

> "It is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempt from unreasonable exactions, and makes the interests of the corporation maintaining a public highway the sole test in determining whether the rates established by or for it are such as may be rightfully prescribed as between it and the public. * * * (p. 546). We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent

improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

Certain contentions of complainant, by which a considerable part of the capitalization in this decree is defended, are based on a very literal interpretation of the second sentence in the passage last quoted. It is maintained that complainant must be allowed an income upon the fair value of its entire property now used in the gas business, even though as between itself and the consumer of gas that result would be inequitable by reason of elements existing in this particular case which were absent in Smyth *v.* Ames, and whose possibility elsewhere could hardly have occurred to the mind of the court. We take it that no proposition here advanced by us will be held to have been overruled in Smyth *v.* Ames, for "no proposition of law can be said to have been overruled by a court, which was not in the mind of the court when the decision was made" (Woodruff *v.* Parham, *supra*).

The rule of "the fair value of the property" was adopted as an equitable one. When it is not equitable, the reason of the rule fails and an exception thereto is called for.

In fact, in the Ames case itself Mr. Justice Brewer contended for the original cost as the equitable basis of ratemaking, when it was expended in good faith (Ames *v.* Union Pacific Ry. Co., 64

Fed. Rep., 165, 178). It was unnecessary to decide the question and the remarks of this court above quoted are *obiter*. The equitable solution of the difficulties involved in this question between original cost and present value we shall endeavor to find, when we come to discuss the unearned increments on land, mains and services, and the hypothetical franchise values, and also the duties of the state authorities as distinguished from those of the Federal courts. Suffice it to say here that the Circuit Courts seem to regard the question as still an open one. Judge Seaman in the Milwaukee Electric case (87 Fed. Rep., 577), and Judge Lacombe in the case at bar (p. 137), seem to regard as the basis, in the words of the latter, "what has been adventured in the enterprise on the faith of the state's franchises." (And see to the same effect San Diego Water Co. *v.* San Diego, 118 Cal., at pp. 569-70, 572, 573.)

(2) *While as a general rule the valuation for ratemaking purposes is the same as in condemnation proceedings, there are exceptions to the rule.*

An element, whether tangible or intangible, may be properly taken into consideration in a condemnation proceeding by the city, when it could not equitably be allowed as capitalization for the purpose of increasing the price to be charged for gas furnished the inhabitants of that city. It may be taken into consideration in a condemnation on behalf of some government or corporation other than the city, when it would not be taken into consideration in a condemnation by the city.

Thus suppose, as we contend here, that some

of the property used by the company is more than necessarily expensive. Thus the company's plant may be built upon land which could more properly be devoted to some other purpose. In condemnation proceedings, the land could not be taken away without allowing its value; but as between the company and the consumer, the company would be entitled to capitalize it at no greater figure than would represent a necessary expense in the manufacture of gas.

Another instance is the "going concern" item (p. 139, *supra*).

(3) *Values and charges should not be duplicated in favor of the company and against the consumer.*

There was a good deal of such duplication in the Master's report, which has been stricken out by the court.

For instance, the Master, besides allowing practically the highest sworn value of the plant, added also the value of the investment at Astoria, although when the latter investment should become effective it was the intention of the company to scrap part of the older plants (p. 215).

He also allowed the so-called "ten cent item" which included indeed renewals, a proper charge, but most of which was intended as insurance against the general risks of business. These are the same risks, however, which are insured against by the rate of profit allowable to a business enterprise over and above the interest earned by capital loaned on safe security.

Both the Master and Judge Hough have, as will be shown, allowed a duplication by adding to the

value of each plant the full value of the land under the plant, although that valuation could not be realized unless the plant were scrapped.

(4) *The period to which attention must be directed is the month of May, 1906. If 80 cent gas was profitable under the conditions then existing, it cannot be held unconstitutional on account of any inferences or speculations as to changes in conditions at a later period.*

This would seem to go without saying, if it were not that Judge Hough has adopted a different rule. He has deducted $200,000, or the interest on a capitalization of $3,333,333, from complainant's net income, on the assumption that there would be an increase of sales which (together with the most profitable part of the present business) he supposes would be provided for by gas made at Astoria.

Yet the testimony in September 1906 indicated a falling off instead of an increase in sales; and Astoria gas had not yet passed the experimental stage, or reached more than a fraction of the estimated output, at the end of January, 1907 (pp. 105-6, *supra*).

A new legislature was in session from the beginning of January, 1907, and if conditions had changed so that 80 cent gas was not longer profitable, *non constat* that the legislature would not have dealt fairly with the situation; or, in case of its failure fairly to deal therewith, that would be the time for the interposition of a court.

This bill was filed May 1, and the temporary restraining order was filed May 18, 1906 (pp. 34, 38). They can be sustained only by reference to the conditions existing at that time.

Yet the decree bases its calculations upon the supposed experience of the complainant during the year ending April 30, 1907, and largely turns upon what is supposed to have happened after February 2, 1907, the day on which the testimony closed and after which we have no information on the subject whatever.

The legislature of 1906 had a right to infer that the conditions of 1906 would continue for the immediate future, and at least until the next session of the legislature; so far as appears in this record they did so continue; and this court in Smyth *v.* Ames, at 169 U. S., 549-50, has provided a remedy if they should change and not be otherwise remediable.

VII.

Applying the foregoing rules to this record, we find that 80 cent gas will give complainant a return of over 9½% upon its proper present capitalization, according to the experience of 1905.

We now proceed to take up for consideration the various items of capitalization and income as to which we have assigned error. These items are as follows: (1) the "real estate"; (2) the plants; (3) the mains and services; (4) the franchises; (5) the supposed loss of earnings from increase of sales; (6) the special franchise tax.

(1)

The "Real Estate."

For the facts as to this, see *supra*, pp. 30-58.

While believing that the decree capitalizes certain large items that should be omitted or reduced for reasons special to themselves, we have not asked the court in our assignments of error to assume that task. Judge Hough imposes on us a compromise (p. 423) which we shall not complain about in that respect. We shall discuss only three points of general application, which involve from $3,200,000 to $8,446,000 apiece.

(*a*) *The basis of valuation should not exceed the cost of the property.*

Suppose two gas companies long established in the same community. Each serves half the consumers of that community. With one exception the circumstances and conditions of the service are alike. That exception is an accidental one. When the companies started, they bought sites for their respective plants which were of equal area and equally well located for the purpose. The locations of the plants are still equally well located for the purpose for which they were originally bought, and for which they are now used. But owing to movements of population—movements upon which nothing done by either of the companies had any influence—Company A's site is in a region now much more valuable for general business purposes than Company B's. The value of B's still remains at the figure which it originally

cost. The value of A's has risen so greatly as to increase the expert valuation of that fortunate company's total property 15%. The experts value that company's property at 15% more than the property of its equally deserving but less fortunate companion. Otherwise the two are alike. Each has the same capital stock. Each has the same gross sales and the same operating expenses.

Is the lucky company entitled to charge 3½ cents more for its gas than the unlucky company? Or rather, is its unlucky consumer to pay more for his gas than the lucky consumer of the unlucky company? If the state undertakes to fix maximum rates, must the maximum rate in the one case be 3½ cents greater than in the other?

We speak of an increase of 15% in the total valuation, because the actual increase which Judge Hough has made in his capitalization by reason of the unearned increment on real estate is about 15%. We say 3½ cents increase in rate, because Judge Hough's increase of 15% in capitalization results in an increase of over 3½ cents in what he considers a constitutional rate, as will appear by calculation. To an equity lawyer or an equity judge it seems to us that but one answer to this question should occur. He must instinctively appreciate the inequitable character of the result which has been reached by the Master and by Judge Hough. But while it is plainly inequitable, it is very plausible. It seems at first glance to follow naturally from the principle that the basis of calculation "must be the fair value of the property being used by it for the convenience of the public." The real estate is being used. Why not allow its fair value?

The fallacy seems to us to lie in the assumption that the company must necessarily be allowed the full value of the property which it uses, whether or not it is requisite that so valuable a property be used. Only so much of the value of the property as was covered by the original investment is really used as capital in gas making. For that purpose the value has never increased. The extra valuation which the expert swears to represents wealth that is being hoarded for enjoyment at some future time, when it shall be released by the removal of the gas plant.

The stockholders of the Consolidated Gas Company are undoubtedly entitled to obtain the full value of each parcel of land, whenever that parcel shall be sold or otherwise disposed of. This they have recently done as to one of the parcels, since it has been condemned by the city and its present value paid. Indeed, they will probably in each case get more than the present full value, because they will be removing a nuisance. The increment in value is indeed unearned by them. It is due to the industry of the whole community, which has built up this great city and enhanced the value of the land upon which the city is built. It is the result of the combined work of the inhabitants of the city; in other words, of the consumers of gas therein. It is in no sense the result of any special wisdom on the part of the managers of this complainant and its predecessor companies. They selected the sites for the various plants of the company, not on account of their estimated salability as building lots in another century, but on account of their appropriateness for the special purpose for which they were to be used in the company's business.

The stockholders of the complainant company will be entitled to their shares in the unearned increment of this real estate, just as they will be entitled to their shares in the increased value of the stock of the New York Edison Company, if that stock shall ever be sold. There is no claim that the present market value of the stocks held in the New York Edison Company is to be taken as part of the property upon which complainant is entitled to a return by joint contribution of the gas consumers of the city. Does the unrealized profit that lurks in the market value of this real estate stand in any better position?

Clearly it does not, because the difference between the present market value of the real estate (if vacated) and its original cost *does not represent property used in the manufacture and distribution of gas.* The proof of this proposition lies in the fact that the difference in value can never be realized until the property ceases to be used for the manufacture or distribution of gas, and is either transferred to general investment account or is disposed of to other parties. So long as the property is occupied by manufactories or holders or for storage it represents for gas purposes no greater investment than its original cost. The difference in value is not wealth used in the manufacture and distribution of gas, *but wealth which the manufacture and distribution of gas keeps out of use.*

This can be illustrated by putting a case.

Suppose that the company had two plants for the manufacture of the gas, one within a quarter of a mile of the corner of Wall and Broad Streets, and the other on the Bronx Kills, and that the

same amount of gas was made at each, at the same expense. Suppose now that one plant was about to be scrapped upon removal to Astoria. Would it make any difference to the consumer which plant was scrapped? Suppose the down-town plant should be scrapped, the land sold, and the money put in bank. Would the consumer be asked to pay six per cent thereon? But suppose that the company should scrap the uptown plant, thinking that the other would rise so rapidly in value that some time it would sell for double its present market price. Is the consumer to pay the six per cent upon this *latent* increment of value, although he would not have had to pay it if the latent element had been realized?

Again: Suppose that the company should invest its present surplus in a land speculation, buying vacant lots in the newer portions of the city and holding them for a rise. So long as they were allowed to remain as land entirely vacant, there would certainly be no claim that they could be included as part of the invested capital upon which the people of the city must pay toll. Suppose, however, that the company should make some use of them, "as, for example" (in the language of the Master) "the storage of coal, coke, pipe fittings tools and castings" (Report, p. 166 top). Suppose that the speculation, (owing to its management by gentlemen having such intimate knowledge as some of the directors of this company have with respect to the future lines of development of the city) should be very successful, and should add millions of dollars to the wealth of the company, which should thereupon clear away the coal and the pipe fittings and realize upon the

land. Is the price of gas to be raised when this deal is closed, in order to represent a reasonable return upon its profits? And if it is not to be raised at the termination of the period, is it meanwhile to be raised so long as the speculation is going on, revaluing the property every year so as to add that year's increment to the total valuation, thus making the gas consumers of the city not only carry the speculation (as they do now by paying the taxes), but pay in addition a reasonable dividend every year upon its estimated although as yet unrealized profit? This is just what the Court holds in the present case.

The fact (if it be a fact) that somebody pays taxes on an assessment equalling or approaching the present valuation, does not affect the correctness of our analysis any more than does the payment of taxes on other investments of the company. Complainant is of course taxed upon its investments necessary to its gas business and also upon its investments unnecesary to its gas business. But all the taxes on the land covered by the gas plant, coal and pipe fittings are in fact paid by the consumer, and so treated in this decree.

The original cost of the land, which should be taken as its valuation for the purposes of this proceeding, is of course its cost to the original company, not the nominal amount at which it was put in to the capitalization when the consolidation was effected in 1884. The price of gas to the consumer cannot be increased simply because the gas company recapitalizes and revalues its property from time to time. The consolidation of the six old companies, by which this complainant was formed, was not equivalent to the pur-

chase of the property by an outsider. No one was interested to cut the figures down. The reason for the valuation was to get figures which would give each "constituent company" its *proportion* of the total stock to be issued. It was immaterial as between the parties whether the valuations were high or low, if all were high or all were low alike; and in fact parties arranged to have them high. Such a transaction affords no competent evidence.

Nor even (to complete the discussion by putting a case not relevant here) if the property as a whole had been purchased by a new company, would the purchaser thereby be authorized to charge a higher price for gas than the person from whom it purchased. The new purchasing company would simply buy the right that its predecessor had. It could not buy a right to charge more than he could charge. The increased amount which it might have to pay, by reason of the fact that the land owned by the vendor company had accumulated a large unearned increment of value, would simply stand as an investment to be realized upon whenever the purchaser company should abandon business or move its plant. It would be an example of the very common situation where one company, determined to buy out another, has to buy and pay for a good deal of property which it cannot immediately use and is not strictly necessary for which the purchase is made; but which will ultimately be worth its cost, and is bought because the buyer would rather purchase than compete.

(*b*) *If the basis of valuation is to exceed the cost of the property, it should still not exceed the estimated cost of replacing it with other property capable of accomplishing the same result.*

The decree is based upon valuations which are made on the theory that the plant is removed and the land thus freed for other purposes, but that the plant is replaced in the same immediate neighborhood. In other words, the valuations are based on the value of property otherwise similar in the immediate neighborhood of the plant, but not covered by the plant. This is a situation which there is no reason to suppose will ever occur. There is no reason to suppose that the company will ever scrap a plant in order to remove it to another place in the same immediate neighborhood. There is no reason to inflate its capitalization upon any such hypothesis. It would doubtless go to the cheapest property which would be available for its purposes; that is, to the cheapest property which could be brought into near connection with its trunk lines of pipe.

The method of valuation proposed by complainant's experts and adopted by the Master and Judge Hough duplicates the valuation of the plant, which admittedly would be destroyed if the land were sold in the market for the prices which they have fixed. Market value, in the heart of a great and rapidly growing city, the sum of the value of the land considered as vacant *plus* the value of the building thereon. If the land has increased rapidly in value since the building was erected, the increase can only be allowed to appear in the total valuation by deducting an equivalent amount from the valuation of the building. This is especially

the case when the building has been used for a manufacturing purpose. It is most especially the case when, as with a gas holder, the purpose is one that would not be useful for any purchaser of the property. The valuations of manufacturing property generally put the building down at little more than a nominal sum.

To take a simple case, suppose that a man buys a lot of land in a residence district, and puts up a handsome house. If he was wisely advised, the total value of his house and land at the start is the sum of the values of the house and the lot considered separately. Suppose however that the character of the neighborhood changes, and that it becomes very valuable for business purposes. The valuation of his lot alone often runs to a figure far surpassing what had been the total valuation of his house and lot; but at the same time the valuation of his house, although it may be as good as new, or even immensely improved, becomes *nil*. The reason of this is that the great value of the lot is due to the fact that it can be used for a different class of improvement. It is no longer wanted for a handsome house, but for a handsome store. A gas plant is much like a handsome house that has been built in the taste of a rich proprietor, whose taste is shared by nobody else. In such a case the house adds nothing to the value of the land upon which it is built. This was illustrated when the two million dollar mansion of the late A. T. Stewart, once one of the wonders of New York, was pulled down a few years ago.

In the present case the complainant wanted to have credit for the full valuation of its plants, and in our computation we shall give it credit for what the Master and court have put it at, although the

figure seems too high; but it also wanted to have credit for the full value of the land, just as if the plants were not there. In other words, it wanted to have its cake and eat it too, and it is being given that permission.

It is well settled in the New York courts, in accordance with common sense and with the prevailing views among real estate men, that the land and improvements are to be valued as a unit, and not each independent of the other; so that if the building does not enhance the value of the land it is to be disregarded altogether (Matter of Blackwell's Island Bridge, 118 App. Div., 272; Matter of Town of Carmel, 56 N. Y. Misc., 311, 318).

(*c*) *The valuations of the witnesses for the state and city should have been followed.*

The fundamental vice of the position of Judge Hough was in assuming that it was simply a Master over whom he was sitting in review. He was reviewing the action of a state. He could increase its figures only by showing that it acted upon figures which would not have appealed to a fairminded man. A fairminded man could have believed the testimony of Messrs. Thompson, McHale and Wells. That is sufficient to dispose of this branch of the case.

The judgments of this court have been upon actual facts proved as to cost and expenses, not upon anybody's guesses as to matter of opinion. "Is the validity of a law of this nature dependent upon the opinion of two witnesses, however well qualified to testify?" (Chicago & Grand Trunk Ry. Co. *v.* Wellman, 143 U. S., 339, 343). Can a law be set aside by one man who has not seen the

witnesses, acting upon the impression which they made upon the mind of another man?

If the state produced no witnesses at all upon the point, or if its witnesses proved entirely incompetent, or grossly unprepared, or dishonest, and no application was made to produce qualified testimony, a different case from this would be presented. It is respectfully submitted, however, *that a statute cannot be declared unconstitutional because persons employed and paid by complainant swear that in their opinion it is unconstitutional, or, what is equivalent, that in their opinion certain valuations ought to be given to certain pieces of property, from which valuations unconstitutionality of the statute would be inferable.*

In other words, it is respectfully submitted that when the complainant pays gentlemen to express opinions as to the value of its property, and the state and city pay other gentlemen, honest and qualified, to testify to a smaller valuation, the presumption in favor of the constitutionality of a statute is strong enough to sustain it, unless the state concedes figures from which the contrary deduction must be made.

Complainant is also bound by its own tax return values, which are almost precisely the same as those given by the state's expert witness. It is not bound by a technical estoppel, but because a fairminded board could have believed that its tax reports were true (p. 189, *supra*).

(2)

The plants.

For the facts see *supra*, pp. 58-75.

One fallacy inherent in the valuation is in the fact that they would never be reproduced as they now stand. If a new and rival company should be established, or if the municipality should itself go into the gas business, modern and not ancient plants would be built. The present company would then undoubtedly have to reduce its rates to meet this new competition, and it would therefore appear that the present plants are not really worth what it would cost to reproduce them as they stand, but the very much smaller price which it would cost to produce plants of modern construction which could do the same amount of work.

There is no very satisfactory evidence as to the amount which should be stricken off on this account. If it were the turning point of the case, the record would therefore have to be returned for further testimony. But this seems unnecessary, in view of the tax valuation.

A fairminded committee had the right to believe Secretary Carter's testimony (p. 189, *supra*), and that would reduce the valuation of the plant by about $7,000,000. Whether this belief, being fairminded, was also justified, a Federal court can not inquire, if our understanding of the cases is correct. In other words, if a company gives low figures to a tax officer, and repeats them to an investigating committee, it has estopped itself from going into a Fed al court to deny them, whatever remedy it may have before the state judiciary.

Whether the tax valuation is correct or not depends upon whether the early destruction of the plants is, by necessity or for profit—that is whether it is a case of genuine depreciation. In our computation we assume that it is not by necessity but for profit (p. 124, *supra*). This assumption gives a higher valuation to the plants, but also bars out all "Astoria" items; for if Astoria will be so much more profitable as to cause such a change in policy, it means that all expense incurred there, including loss of interest pending construction, will come back in reduced cost of operation.

(3)

Mains and services.

For the facts, see *supra*, pp. 75-9.

The book value and the value given to the tax commissioners of the mains and services fairly represents the original cost, and fairly represents their present value if the streets had not been repaved over them, and if the expense of laying down other pipes under otherwise similar circumstances and conditions had not been increased by the increased occupation of the streets for other purposes. On account of this greater occupation of the streets at present, and most particularly on account of the new pavements, the value of the mains and services has been so largely raised.

If cost of reproduction (that is, cost of duplication by a new rival company, or by the municipality if it should go into the gas business,) is the proper standard of valuation, there may be still some question about the correctness of complain-

ant's figures, which are increased every time that its witness goes on the stand; but conceding the figures to be correct, why is not the same principle applied to the plant? Why is that not also valued on the basis of what it would cost to build another plant doing the same work? Why is it not applied to the real estate? Why it that not also valued on the basis of what it would cost to buy other real estate, in a more appropriate neighborhood, to hold that other plant?

Taking the matter up in another light, what equity is there as between the company and the consumer in raising the latter's price of gas because the city has repaved the streets? The company has not paid a cent for the improvement. It is even excused under the state law from paying assessments (Matter of Anthony Ave., 46 N. Y. Misc., 525; Matter of West Farms Road, 47 *id.*, 216). The paving is paid for by the property owners of the vicinity; that is, by the consumers or their landlords; and if by the landlords, the cost is presumably collected out of the consumers by way of rent.

Under what principle of equity are the gas consumers of the city, having paved it at their own expense, required thereafter to pay to this gas company, on account of those improvements, an annual bonus in the shape of increase in the price of gas?

Suppose there to be two gas companies in the same city, each serving half the inhabitants. Each has put up plants at the same cost and is operated under the same conditions. Then the city, with money collected out of the inhabitants of the territory served by one of the two companies, puts an improved pavement on the streets occupied by

the mains of that company. Is that company, although it has not contributed a cent to the expense, to be permitted thereafter to charge a higher rate for gas than can be charged by the other company to the inhabitants of the other half of the city? Must its consumers, who have paid for the repaving, pay it tribute because the streets have been repaved?

It may be suggested that the new pavements increase the expense of repairs to the mains. Very true. But this increased expense is paid by the consumer, not by the gas company. It appears on page 219 of the Master's report as "Repairs to Mains, "$126,110.31" and "Repairs to Services, $89,033.46." The cost of renewing mains and services, when they have to be renewed, is also paid by the consumer (p. 404).

(4)

The franchises.

For the facts and for the law as to the validity and duration of the franchises which complainant claims, see Appendix A hereto.

For the facts bearing upon their value, see *supra*, pp. 20-22, 80-94.

Judge Hough admits, or rather we should say insists, that in his own individual opinion the question of franchises on such a valuation is without justification and reason, and is a judicial fallacy (pp. 411-13); and he refers to his inclusion of the franchise valuation (although that inclusion forced him to decide in complainant's favor instead of dismissing the bill) as "a finding opposed to the settled opinion of the Judge who happens

to constitute the Court" (p. 425). He came to the conclusion however that he was forced to the contrary ruling by a supposed "trend of decision," by "methods of reasoning pursued in well considered cases dealing with kindred topics," and "by the *dicta* of courts of approved authority," indicating "a train of thought" opposed to his own and our view as to what the law ought to be; that on the principle by which "private citizens may acquire vested property rights through a series of even erroneous decisions," he is obliged, in order not to be "doing violence to theories of law and habits of legal thought fairly discoverable in these cases," to allow complainant $12,000,000 which he does not believe belongs to it, "because to refuse would disregard views expressed by higher courts" (pp. 413-14).

We have carefully examined the cases which are referred to with this mixture of respect and disrespect. In only one of them (namely, the Spring Valley Water Works case, which he has refused to follow upon the question of the rate of return to be allowed by a Federal court) do we find any justification for his application of them. In that one exceptional case, we find that Judge Morrow has fallen into the same error with Judge Hough—he has failed to observe the distinction between two entirely different classes of franchises. Neither this court nor the New York Court of Appeals have made an erroneous decision, or fallen into bad habits of legal thought, or made *dicta*, or taken a trend, or expressed views, which justify the conclusion which the learned District Judge has reached.

We think that he has been misled, both at this point and in his insistence elsewhere upon the state's so-called "special franchise tax" as having a bearing on this part of the controversy, *because he has been using the term "franchise" as if there were only one species of franchise.*

He has overlooked the fact that the word "franchise" is commonly used in a broad sense, to include rights whose limitations as well as duration are quite diverse.

There are three distinctions whose observation will clear away the fog which has obscured the vision of the learned judge.

First distinction. Between a franchise with, and a franchise without, the right to charge a minimum toll, or earn a minimum dividend.

Customs have differed widely in different states as to the breadth of franchises, as well as their duration. Some states incorporate in their franchises some provision as to the minimum rate of toll or dividend, often at the same time putting a time limit on the entire franchise. Other states generally put no express limitation on the franchise, but on the other hand accompany it with no special guarantee against future legislation limiting the earnings. New York belongs to the latter class.

Hence an argument as to whether or not a "franchise," *per se,* should be separately valued, is an argument based upon insufficient information. It is necessary first to ascertain whether any particular rate of return is guaranteed.

When the "franchise" includes a provision by which a company is privileged always to charge a toll of not less than a given amount, or to charge

such tolls as will enable it always to earn a dividend of 8%, there is of course a contract which the state can neither directly nor indirectly break.

Such a case was Monongahela Navigation Co. *v.* United States, 148 U. S., 312, relied upon by Judge Hough at page 414 of his opinion. This case arose under a statute providing for the condemnation and removal of a certain lock and dam. The statute expressly provided that no compensation should be awarded for "the franchise of said corporation *to collect tolls*" (p. 313); and this franchise "to collect tolls" was excluded from consideration by the court below (p. 319). Mr. Justice Brewer speaks in his opinion of "*both* the right of the company to have its property there *and* the franchise to take tolls" (p. 341), and refers to the latter again as a separate affair at pages 342 and 344; and he says that "*these tolls*, in the nature of the case, *must enter into and largely determine the matter of value*" (p. 329). Judge Hough's misinterpretation of the case was due to his erroneous assumption that in speaking of "*both* the right of the company to have its property there, *and* the franchise to take tolls," the court was not speaking of two separate provisions in the charter of the company whose property was being condemned, but was discussing a charter in the common New York form, like those claimed by this complainant. Justice Brewer says that "the amount of compensation was subject to the determination of the State of Pennsylvania" and that the "prices which may be exacted under this legislative grant of authority are the tolls" (p. 329); and by examination of the legislative grant of authority, which was both pleaded and proved and

was printed in the record before the court, it will be perceived that the company was originally created with a statutory right to a nine per cent toll, afterwards raised to twelve per cent besides the permission to establish a contingent fund of not over $50,000, afterwards altered by providing that one-half of the tolls above ten per cent dividends should be paid to the commonwealth (Monongahela Record pp. 33, 39, 50). By a subsequent agreement between the state and the company it was provided that "no reduction shall be made at any time so as to afford a less dividend than eight per cent per annum on the capital stock" (p. 53). The report of the case contains a full statement of the argument by the United States; and it will be perceived that no question arose as to whether or not the franchise to collect tolls was in itself a right of independent value. The only points made were that the state franchise was not good as against the United States, and that the state had reserved an option, which the United States might exercise, to take over the property at a fixed sum (pp. 320-3).

The other Federal cases upon which Judge Hough relies have no bearing on the point, except Judge Morrow's opinion in the Spring Valley case, 124 Fed. Rep. at p. 594, which has no independent discussion but simply follows what he erroneously supposes to be the Monongahela ruling. In the Reagan case it is clear that tangible property only is in mind in the Court's discussion (154 U. S. at pp. 402-3, 405-7, 411). The Reagan case had nothing to do with what he seems to cite at p. 415 of his opinion (Rates from St. Louis to Texas Common Points, 11 I. C. C. Rep. 238, 264). That is an opinion

of Mr. Prouty about a valuation of railroad property under a Texas statute of 1894, for the purpose of limiting the issuance of stocks and bonds.

The New York Court of Appeals opinion upon which he relies is that in the famous Broadway Railroad case, People v. O'Brien, 111 N. Y. 1, 41. It received the concurrence of three judges only, doubtless because in its *obiter dicta* it went a little too far. For instance, a franchise can hardly be inheritable if granted only for a term of years; nor is it strictly accurate to speak of it as alienable if granted in language which does not permit of voluntary alienation. The franchise then under consideration was practically if not literally perpetual, and was also alienable. All the adjectives and descriptive phrases used in the opinion were properly descriptive of the case in hand, and their inapplicability to other conceivable situations was not perceived. The question involved was whether the legislature had the right, by arbitrarily repealing the charter of the company, to deprive its bondholders and stockholders of the right to have its tangible property maintained as a going concern; in other words, to realize more than its scrap value.

With franchises of the Monongahela class however, which carry a right to charge a minimum compensation and therefore are capitalizable at a valuation additional to that of the tangible property, this court has had frequent information, as in the Detroit case, 184 U. S. 368.

Second distinction. Between short and long term franchises.

This is an obvious distinction. A franchise originally granted for fifty years, and terminable

to-morrow, is protected by the constitution until to-morrow, but is negligible in a condemnation or rate making case, even if it carries a guaranteed 10% dividend.

Third distinction. Between revocable and irrevocable franchises.

This distinction also is one which hardly needs consideration. A revocable franchise is equivalent to a revocable license; and the courts have recognized that no value need or should be assigned to such a franchise or license, when the sovereignty which has granted the license concludes to condemn the property. Condemning the property involves the revocation of the license (Kingsland *v.* The Mayor, 110 N. Y. 569, 583). In the Monongahela case, *supra,* this principle was indeed unsuccessfully relied upon by the United States; but the court held that the United States could not avail itself of a power of revocation reserved to itself by the state.

Bearing in mind these distinctions, let us now proceed with the main argument.

(*a*) *The franchises claimed being unconstitutional, or not the property of the complainant, or revocable immediately or upon short notice, they cannot be capitalized as against the city or its inhabitants.*

(*b*) *A franchise to build and operate, without any special contract as to rates of fare, has no value cognizable in ratemaking or condemnation proceedings except that it gives the company the right to have its tangible assets valued at a sum higher than their scrap value.*

We are speaking now of the *simple* franchise to build, operate and make reasonable charges, as distinguished from what may be called a *compound* franchise guaranteeing also a minimum rate.

Of course if the company had no franchise—if it could be turned out of the streets at any moment —its plant, mains and services could not be valued at anything approaching original cost, or cost of reproduction. They would be almost a total loss, except so far as covered by the unearned increment on the real estate, which the removal of the plant would enable the company to realize. The franchise has indeed an enormous value so long as it is not terminable or terminated by expiration or revocation, "because" in Judge Hough's words "it authorizes the gainful use of private property in a particular manner" (p. 413); "because" to use his language again, it is "an attempt to protect those investing their property upon the faith thereof, * * * the property which it renders fruitful" (*id.*).

In the main case under the New York "special franchise tax law" (*People ex rel Metropolitan Street Railway Co.* v. *Tax Commissioners,* 174 N. Y., 417, subsequently before this court at 199 U. S., 1), Judge Vann, in discussing the tangible property in the streets, says that it is "so incidental to and dependent upon the special franchises as to have no substantial value unless used in connection with them" and therefore to have a relation with them "so intimate as to be inseparable in any practical system of estimating values," and that all the "mains and pipes, poles" etc., "when separated from their special franchises, have no value except as firewood or old iron. Their only sub-

stantial value is the right to use them in connection with the franchise, and hence they are incidental to the franchise. As part of the franchise they are worth something, but severed from it nothing to speak of"; and hence that the tangible and intangible property in the streets constitute "a new entity, which as a going concern *can neither be assessed* nor sold to advantage, *except as one thing, single and entire.*" This is substantially Judge Hough's reasoning. Judge Vann does not hint that a special franchise can have any value *additional to* the immense value to which it thus contributes, when there is no charter or contract right to charge any particular rate.

Judge Vann's reasoning but adopts that of Thomas F. Rowland, who built parts of complainant's plant and appraised other parts of it in 1884. Being asked to value the franchises, he said that without them he could not "conceive that the property is worth anything except what it is worth for old material," and that his valuation of tangible property is a "valuation of that property in the manner which it was used at the time I made the appraisal. * * * That is no use except to have the right to open the streets" (p. 6097).

In *Brunswick Water District* v. *Maine Water Co.*, 99 Me., 371, 375-81, cited in Beale and Wyman on Railroad Rates, § 362, as opposed to the separate valuation of franchises, the court discuss the franchise question at considerable length, and come to the conclusion that the franchise is what makes the structure legally "a going concern structure" and "that some difficulty in discussion has arisen from attempting to differentiate in logic what is inseparable in fact," and

that the property cannot be valued "separate from its inherent characteristics" and therefore cannot "be valued in entire disregard of its franchise characteristics," and that even when the statute does not specially mention franchises "it must have been implied that the property was to be valued as rightfully where it was, and rightfully to be used, for what are pipes in the ground worth as pipes, or reservoirs or dams or fixtures, unless they can be rightfully used, and reasonable tolls charged? And these rights are the franchise, at any rate, the most important ones" (pp. 376-8). The court concludes "that the value of money invested, in whatever form it now is, is affected by the right to use it in that form. That is, by the franchise" (p. 380). This also is substantially Judge Hough's reasoning.

Summing up the doctrine of these cases as we understand them, we may say—*A simple franchise is the right to operate as a profitable going concern what would otherwise be a job lot of second hand material.*

That a simple franchise can not be given a separate and independent value, for the purpose of increasing the price of gas against the consumer, is obvious.

There was no implied agreement or understanding, when the franchises were granted, that the grantees should earn a reasonable return on anything more than the capital invested. The grants were made subject to the state's right to so limit the return. It was for this very reason that compound franchises, guaranteeing a higher return, have been so commonly asked for, and so often granted. They were asked because that was the

only method by which a specially high return could be secured.

It is now well settled that, whether a franchise be exclusive or not, whether it be perpetual or not, it is subject to the right of the sovereign, in the exercise of the policy of power, to fix a maximum reasonable rate. The right to fix such a rate has been long settled, and is complete unless there has been a most clear and accepted contract between the sovereign and the grantee, by which the right is waived or limited (Smyth *v.* Ames, 169 U. S., at pp. 545-6).

Since then a franchise is granted subject to the fixing of a reasonable maximum rate, it is a matter of mathematical demonstration that no value of the franchise itself can come into the calculation by which that reasonable rate is arrived at. The franchise is held subject to a servitude, and a servitude cannot be got rid of indirectly by any process of computation based on the assumption that it does not exist. The very large return which is received by the owners of many franchises is due partly to the fact that sovereigns recognize the right of people who have risked their money in such enterprises to receive a higher rate of return than is received by persons who invest in safer securities, and partly because ignorance and inertia and preoccupation often delay for a long series of years any action (indeed any investigation) by the sovereign upon the matter at all. The immense sums at which the so-called public service franchises in our large cities have been recapitalized by promoting syndicates have been based upon the doctrine of chances; the chance that the sovereign will not find out how much the company is really making (if that can be

concealed by over-capitalization, especially through bond issues and consequent low dividends upon the stock), or that it will not enact or enforce a system of reasonable rates.

The absurdity of complainant's theory is well illustrated by the court's calculation that the value of the franchise has so enormously increased since 1884. Certain testimony elsewhere criticized by us is to the effect that in that year the difference between the agreed value of the tangible property and the agreed total capitalization, being $8,084,000, was divided up arbitrarily into $1,303,000 "Working Capital" and $7,781,000 "Rights, Franchises, &c.," and that the latter figure has been accepted as a valuation of franchises by the Master and court. Assuming the figure to be a correct valuation as of that date, then if a reasonable maximum rate had been fixed by the state in the year 1884, and since then maintained, the item could never have grown above that figure. But the court now finds that this same intangible property (it is not claimed that any new franchise has been since acquired) has increased in value by a sum exceeding $4,200,000, *this increment in value constituting more than one-fifteenth of what is fixed as the present capitalization.* And this burden upon the consumer who has got to pay six per cent upon the increment result from no action taken by complainant for his benefit, but only because the number of consumers and their necessary use of gas have increased, and *because the public authorities for so long a period lay idle,* whether from ignorance, indolence, corruption, or from a *bona fide* desire to let an enterprise earn a high rate of interest as

long as it should be in any sense an "infant industry."

What doctrine could be more absurd? What doctrine could be more pernicious to our government? What doctrine could have a greater influence and effect in putting railroad companies and gas companies into politics? For every year that by manipulating primaries and conventions, and arranging deals, and diverting the attention of legislators and municipal officers, they can postpone the evil day of state regulation, they can gain an eventual increase of income when that evil day shall finally arise. *And what they shall thus have gained will be protected by the Federal Constitution and will be a perpetual asset.*

A new company starts off with its real property, construction, equipment, and working capital. It has permission from the public to operate for a definite or indefinite future time, charging tolls. Sometimes a charge is made for the permission, which the company pays as a commission for getting the business, as part of its initial expense. There is an implied understanding that the tolls shall be high enough to give the company a fair return. A fair return on what? Suppose the charter guaranteed a profit of 6%, but failed to mention the amount upon which the profit should be calculated. What would counsel advise a proposed purchaser about it, the day after the company opened for business? According to our contention it would be calculated upon the capital invested, which has been spent in obtaining the aforesaid real property, construction, equipment, working capital, and permission. But if it is to be the capital invested *plus* something further, then *plus* what amount? Surely the sum

must be knowable, if it is to be taken into a calculation. If there is an implied agreement about it, there must be some way of finding out what the public agreed to.

Again, suppose the sum to be ascertainable, so that the public could be told "You have given away $1,000,000", or "$7,781,000". How does this gift grow afterwards? How does it get to be $12,000,000? In the earlier years of the industry a company like this ought to be allowed to earn a specially high return, a return higher than would be permitted to concerns engaged in older and better understood kinds of business, because it is good policy to attract the investment of capital in novel enterprises. *But by what process does the allowance of this specially high rate during the period of special risk increase the capital as well as the income of the company?* If there were any result like this to be feared, would it not deter the state from encouraging new enterprises, for fear of their levying tribute on posterity? Is there any equity or reason or public policy or common sense in a doctrine which permits the gift to grow in capitalized value as against the giver, after it is given? Is there any of either in a doctrine which values the gift as a separate item even at the start?

What then is the item which nowadays we see so often capitalized by promoters under the head of "franchise and goodwill"? This item is not peculiar to public service companies. It is as common in "industrials". It is merely the promoters' estimate of what the purchasers of the stock will consider the chance of being able to sell goods at such rates as to make an extra high profit, over and above a satisfactory rate of profit on

the rest of the capitalization of the company. In the case of an "industrial", there is no appreciable risk of state reate regulation, but there is risk of competition. The "franchise and goodwill" represents probability of making that extra high profit, notwithstanding the risk of competition. In the case of a public service corporation there is no longer now much risk of competition, but there is risk of state rate regulation. Here again the "franchise and goodwill" represents the same probability—a probability that for some reason the company will be permitted to make a profit that is over and above a reasonable and satisfactory percentage on the capital actually invested. In either case the item represents a commercial wager that may be lost.

Complainant put much reliance upon Matter of Water Commissioners of White Plains, 71 App. Div., 544, 176 N. Y., 239. This is an obscure case and a border case; a reversal by a bare majority of the Court of Appeals, the present Chief Judge dissenting, of a unanimous opinion of the Appellate Division, in which one of the present judges of the Court of Appeals concurred. As we understand it, it does not affect any question here, and as Judge Hough did not cite it, we presume that he read it as we do. It was a condemnation proceeding by the Village of White Plains. The company's tangible property had cost nearly $330,000, but was assessed by the commissioners at only $103,000, upon the theory that the franchise which gave it its value was about to expire. This theory the Court of Appeals held to be erroneous. That court has no jurisdiction to consider any question of fact, and upon holding the commissioners' theory to be erroneous could only

reverse and direct further proceedings. Judge Vann concurred in the opinion, and there is nothingg in the case to indicate that he regarded the franchise in any other light than that described by him in the special franchise tax case (p. 221, *supra*).

We have already pointed out that there is no judicial precedent sustaining a separate franchise valuation except Judge Morrow's misreading of a decision of this court (p. 218, *supra*), which is disapproved by Beale and Wyman (Railroad Rates, § 362); while in the Stanislaus County case that afterwards came to this court (192 U. S., 201, 216), a claim for such a valuation, having at first been put forward, was afterwards formally withdrawn by the complainant's counsel (113 Fed. Rep., at p. 935), undoubtedly because discussion had convinced him of its indefensibility. In Judge Seaman's very careful discussion of the Milwaukee Electric case no franchise item was taken into consideration, although the franchises had twenty-six years to run (87 Fed. Rep., at p. 583).

(*c*) *The "special franchise tax" has no bearing upon the question.*

It was the existence of this tax that seems to have mainly influenced both Judge Lacombe (pp. 142-3), and Judge Hough (pp. 416, 425). That they acted under an entire misconception of the New York statute and of the proceedings thereunder will be shown when we come to the discussion of the special franchise tax item.

(*d*) *If the franchise is susceptible of separate valuation, only a nominal sum is allowable.*

Complainant claims no exclusive franchises. Hence considerations with which this court is already familiar show that a franchise valuation must be small, if at all allowable. The state can at any time authorize or direct the city to build its own lighting plant. This would be equivalent to the abolition of all advantage to the complainant, except its monopoly during the time necessary for the city to build and equip. When it builds and equips, the company must drop its claim for a profit on its alleged franchise or lose all its customers. It will doubtless drop part of its charge, even if it can compete at all. This was conceded and assumed by everybody in the litigations over the statutes permitting municipalities to go into competition with other public service corporations, as for instance the Skaneateles Water case, 161 N. Y., 154, 184 U. S., 354, and the Newburyport cases, 168 Mass., 541, 555, 103 Fed. Rep., 584, 193 U. S., 561.

Judge Hough substantially concedes that there is no direct evidence of value (p. 416). His fanciful method of valuation (pp. 417-8, 424-5) is without support in facts, as we have shown in the statement of facts (pp. 83-93, *supra*). The state has valued these alleged franchises at zero, or at a nominal sum. Under the rules laid down by this court (pp. 188-9, *supra*) it was incumbent upon complainant to show that this ruling of the state was "a flagrant attack upon the rights of property" and one which would be "impossible for a fairminded board." Yet this very complainant, just before the passage of this 80 cent gas law and the commencement of this suit, had filed

with the state a paper sworn to by an officer whom it presented as a fully qualified expert, stating that all its property in the streets, tangible and intangible, would sell for less than the amount at which the tangible part is put down in the decree. This is as good testimony as any other testimony in the case. *Could not a fair-minded board believe it?*

Never has a state statute been denied enforcement upon reasoning so speculative. Indeed, if this court has ever affirmed a case overthrowing a rate law on any speculative reasoning at all, we have overlooked it. This suit, if it terminates in a decree for the complainant, will be a long step forward in the movement for substitution of the judicial for the legislative discretion. Would this be in accordance with the traditions of the comity of the judiciary to the legislature? Or of the comity of the Federal to the state government? Would it be in accord with a true public policy?

(5)

The supposed loss of earnings from increase of sales.

For the facts as to this, see *supra*, pp. 100-112.

The facts need no comment.

So far as they are disclosed, they disfavor complainant's contention. So far as they are undisclosed, we know only that they are facts which the complainant might have furnished had it chosen to do so, but which it prevented defendants from getting, by successfully shutting off investigation both into its own ope-

rations after December 31, 1905, and into the affairs of the other companies. The year 1906-7 was three quarters over when it closed its case in rebuttal and successfully objected to any surrebuttal. It did not offer to show how much gas it had had for supply, or where that gas had come from. It is subject to the presumption against a party who will not show his books, but relies upon friendly experts instead (Sturgis v. Clough, 1 Wall. 269, quoted in The Conqueror, 166 U. S. 110, 128, 134).

The whole mix-up is an illustration of the juggling made possible by the recent legislation permitting one company to control the stock of another, which controls the stock of a third, and so on. Here the main company gets a $200,000 income allowance, which is equivalent to an allowance of $3,333,333 on the capital side of the account, as representing capital invested in Astoria stock. It gets the allowance on the theory that it will transfer its patronage to the Astoria subcompanies from the older subcompanies. The latter have 80 cent cases of their own, just like this case. When their cases come up for trial, we shall probably find that the 1906-7 gas was really made by them, so that there should have been no $200,000 allowance here; that in effect its allowance here represented capital invested in their stock; but that they are entitled to disregard the decree here, not having been technically parties to it, and to be allowed for all of their own capital against their own consumers. Thus $3,333,333 of the capital of the Standard and the other companies will have been counted once against their own customers, and once against those of the complainant.

Even if we lay aside all evidence tending affirmatively to discredit this deduction, it is entirely speculative, for complainant has the burden of proof, and nothing in the record supports it; while on the other hand, *a considerable amount should be added to the net earnings in the calculation, because the state is entitled to assume an increase of profits from increase of sales at the lower price, and this assumption can not be overthrown by mere speculation on the part of the court.*

In any event the $200,000 should be subject to a deduction of $58,149.84, interest on cost of New Amsterdam construction (p. 102).

(6)

The special franchise tax.

The Master and the learned judges below have discussed this tax as if they had only read its name, and not its definition. They have assumed that a franchise must necessarily be something of a permanent nature. Yet the language of the New York special franchise tax law is set forth in the Master's report at page 201.

The words "special franchise" include not only a "franchise", but other things also. They are defined as follows:

> A franchise, right, authority or *permission* specified in this subdivision shall for the purposes of taxation be known as a "special franchise."

The words "specified in this subdivision" refer to the paragraph also quoted by the Master as follows:

> The value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon or through any streets [&c.] any mains, pipes, [&c.] for conducting * * * gas, &c.

Thus a company that has no franchise, but holds an annual license or simple permission,—whose status is that of a tenant from year to year, or at will, or by sufferance—is just as fully taxable as if it had an exclusive franchise in perpetuity.

A *permission,* so long as the permission continues, yields just as large an *income* as a perpetual franchise for the same number of mains and pipes. The annual value being the same, the assessment and tax should be the same; and the statute so evidently contemplates. A man ninety years old pays the same tax upon the land which he holds in life estate as his grandson will pay when he comes into its ownership in fee simple absolute.

The way in which the tax is assessed, as described by the Master in his report at page 204, makes it in effect a tax upon the total earning capacity of the company, *minus* such an amount as may properly represent its tangible property otherwise assessed.

The statute has received a practical construction, both from the state assessors and from the various referees who have dealt with it in certiorari proceedings. *The tax is the same whether the company has a franchise or right, or only an authority or permission.* The question whether the streets are occupied under a perpetual contract, or long term contract, or revocable license, has never cut any figure. *It is only the annual value which is taxed,* and the actual net profits are

the basis of the valuation. Of course the rate of fare, or the price per cubic foot or kilowatt, is one of the principal factors governing the net profits, and through them the rate of tax. For if the state and city permit a company to occupy the streets *pro tempore* with what is for the time being an exclusive privilege of supplying gas to the community, and do not, on the other hand, put any limitation upon the price which it may charge, *the permission tax,* called in the statute a *special franchise tax,* will be very considerable. But if, on the other hand, the state reduces to the extent of twenty per cent the rate charged, the tax will be very much less.

This shows the fallacy of the idea that the state is estopped, when it lays an annual tax upon a permission to occupy the public streets, from denying that that permission constitutes a perpetual franchise. The Constitution gives the power to grant franchises to the legislature. No action of a tax officer can constitutionally grant a franchise. Any franchise granted by a tax officer would be a nullity. A franchise granted indirectly by levying a tax under that name would be no better. The tax officer cannot even give right of possession (Consolidated Ice Co. *v.* The Mayor, 166 N. Y., 92, 101-2) unless he is the duly authorized agent of the State for that purpose.

People frequently have tried to claim grants from the state by getting tax officers to tax them upon pieces of land; but they never succeeded in doing so, so far as we are aware. If the taxing officers try to tax a man upon some piece of property which he does not own, his remedy is to prove that he does not own it. This would have been the complainant's proper method of relief, if it were

being taxed upon a franchise which it did not possess. It did not dispute, but admitted, that it had a franchise taxable under the act if the act were constitutional. Consequently no decision of any court in any proceeding under that act is a decision upon the question whether the complainant had a franchise or not. But that is immaterial; *for we concede that it has franchises, taking issue only as to their duration.*

Furthermore, how can the complainant assert an estoppel as against the consumers, based upon a tax *which the consumers pay,* and from whose payment the complainant is relieved? There has never been any dispute in this case over the proposition that whatever special franchise tax might be payable in 1907 or 1908 must be charged as an operating expense against the consumer (see pp. 223, 383).

Hence there would be no estoppel on the State, as stated by Judge Hough at p. 425, even if the tax officials had acted on a theory of permanence of franchises. Upon what reasoning the estoppel idea was based, we have never been able to discover.

In view of complainant's insistence upon the assessment of 1906, however, it may be well to analyze just what happened. Assessments are made every year as of the second Monday of January, under the practical construction given to the Greater New York Charter (Ash's edition, 1906, pp. 578-9), read in connection with section 42 of the Tax Law as amended. The present assessments were in fact made as of that date (p. 81, *supra*). On the second Monday of January the rate was a dollar, and the value of the special franchise at that period was such as the net earn-

ings based upon a dollar rate would indicate. The 80-cent gas law was not enacted until May. Immediate objection was made to the assessment, and it is not claimed that the question has been as yet finally settled either by compromise or adjudication.

Not only in 1906 however, but in 1907 and 1908 as well, it has been the duty of the State Assessors (whether they have done their duty or not) to assess the "special franchise" on the theory that the dollar rate continues. They must assume that it continues until this suit is otherwise decided. It is the duty of complainant's counsel, on the other hand, to resist payment of a tax upon this basis. The consequent litigation must remain pending until the final settlement of the present controversy. Each party to the litigation must act as if the other were going to win. This is the uniform experience of a tax upon the exercise of a privilege which the owner considers more valuable than the state admits. The main controversy is over the value of the privilege. The tax upon it must temporarily remain unadjusted.

The tax rate is under .015% (p. 1002). Assuming the tangible special franchises, that is, the mains and services, to be finally assessed at their full cost or book values (p. 77, *supra*) or together at $9,064,822.12, the tax would be under $136,072. If assessed at the Master's values, or together at $14,630,184, the tax would be under $219,452. If the 80 cent gas rate should turn out to give the company only a reasonable return on its tangible property, then there would be no intangible special franchise to tax, and the balance of the $406,909.23 special franchise tax item of 1905, after deducting the tax on the mains

and services, would have to go out of the calculation. For the figures of 1905 are only relevant so far as they afford a presumption that the expenses will be the same thereafter (p. 399).

How far the $406,909.23 item will be wiped out is a matter that can not be calculated until we have calculated the probable return to be earned under the 80-cent gas law. The method is shown by People *ex rel.* Jamaica Co. *vs.* State Board, App. Div., 3d Dept., Sept. 1908 ☆(S. P. Chicago Union Traction case, 114 Fed. Rep., 557, 561). The calculation is as follows: First ascertain the value of the tangibles, excluding the tangibles in the streets (mains and services) which are classified as part of the special franchise. Next ascertain the net income, assuming there to be no special franchise tax. Subtract from the latter sum 6% on the former sum. Capitalize the remainder on a 6% basis to give the real value of the permission for the current year. Equalize this by reference to the general basis of assessments, if it is not customary to assess at full value. Then about 1½% on this sum (p. 1002) will be the special franchise tax to be paid during the current year.

Summary.

Capitalization (Judge Hough's) less than	$59,831,435
Deduct real estate values not part of the wealth employed in supplying gas (p. 43, *supra*) about	8,446,000*

*If other theories are adopted instead of the one which we believe to be the correct one, the figure to be deducted would be $6,325,310, (p. 36), or $3,200,000 (p. 47). Even with the latter modification the net income would be over 8%.

Mains and services, excess over book value (p. 77, *supra*) about	5,605,962	
Franchises	12,000,000	
		26,051,962
		$33,779,473

The net income for 1905 at the 80 cent rate according to Judge Hough would have been about $3,225,000.* This is over 9½% on the above capitalization.

If we regard the removal to Astoria as a forced one, there is to be deducted about $7,000,000 as representing depreciation in plant, as shown by the tax report.

VIII.

The basis of the maximum rate regulation should not be a figure exceeding the capital actually invested in the enterprise, and upon that basis 80 cent gas will give complainant a return of over 22% according to the experience of 1905.

In the summary statement just given, the capitalization of the company has been estimated upon the basis of present value, less certain items

*This is his figure *for 1905*. He deducts $200,000 on account of supposed variations *in 1907*. We base our calculation on the date as to which the evidence was taken.

But the $3,225,000 should be largely increased owing to the reduction in the special franchise tax due to reduction in price of gas. This, as well as the fact that complainant has been grossly underassessed in the past, is shown by the Jamaica case, cited on the previous page.

not equitably capitalizable as against the consumer for the purpose of increasing the price which he should pay for his gas. The elimination of these inequitable items practically reduces his capitalization to actual cost. We believe that there should be a still further reduction, and in order that the discussion of the subject should be complete we set it forth, although we believe that we have already reduced Judge Hough's figures to an extent several times sufficient to require the dismissal of this bill of complaint.

If the capital actually invested in the enterprise be taken as the basis of discussion, its amount is considerably smaller than the original cost of the present property. The difference arises from the fact that *part of the cost was paid by the consumer, and is properly to be credited to him and not to the company.* Eliminating that portion of the capital which was the contribution of the consumer and not of the company, would reduce the capitalization to about $14,564,571.82 (p. 25, *supra*) upon which the return (without any allowance for special franchise tax) would according to the experience of 1905 have been over 22%.

This raises two questions: (*a*) whether the capital actually invested in the enterprise is the true basis of capitalization for the purpose of establishing maximum rates; and (*b*) whether amounts secretly expended out of surplus earnings in extension of the property, during periods when very high dividends are being paid, and without the real facts being known to the public, are to be regarded as contributed by the stockholders or by the consumers.

(*a*) *Where the present value of the property is greater than the capital actually invested therein, the latter and not the former is the proper basis of capitalization.*

The cases which have previously come up to this court have been all cases of *depreciation* in value. No case of *appreciation* has appeared here. If we are to be content with purely superficial reasoning, and not really look into the equities of the situation, it is of course easy to say that if the company is going to lose the benefit of part of its investment when values depreciate, it must get the benefit when values appreciate. Like much other superficial reasoning, this is plausible and sounds fair, and the Master has cited *obiter dicta* of Judges Ross and Thayer in its support (pp. 168-9); while Judge Hough seems to regard any argument to the contrary as a reflection upon the state (p. 393).

The problem does not seem to us to be one that can be so easily disposed of. It seems to us that there are more factors in the situation than have been allowed for.

Maximum rate legislation is based on the assumption that the companies whose rates are to be regulated are practically monopolies. So long as real competition exists, government interference is unnecessary and as a matter of fact does not occur. The period for maximum rate regulation arrives when as here one company has a monopoly, or when competition between two companies is avoided by an alliance between them.

For the result is the same in either case, and we may therefore consider the subject on the assumption that there is but one company, which holds a practical monopoly because (whether on

account of the constitutional prohibition, or legislative policy, or local policy) no franchise is given to a competing company. We also assume that there is no express or implied agreement preventing the state from giving a franchise to a competing company, and no moral obligation upon it not to do so.

In case the values of the company's properties appreciate by reason of circumstances over which it has no control, and without expense to itself, the question is as we have previously stated, one of equity as between itself and the consumers. In case of depreciation of values, the state is free to grant a franchise to a competing company, or to permit the municipality to enter the business; and such a course, as frequently held by this and other courts, is perfectly legitimate; and it has been conceded by counsel and recognized by the courts in all cases in which such a situation has been considered that the establishment of the new company will at once destroy any ability of the old company to charge a higher sum than a reasonable rate upon the present value of its property, after charging off the depreciation.

Nevertheless there would seem to be often considerable equity in favor of the original company. For instance, it may have been a pioneer in the new business, and rapid progress of invention may have caused great waste by destruction of fixed capital for the purpose of improving service and keeping it up to date. The Milwaukee case was such a one, this class of waste being estimated by the court at two-sevenths of the entire investment. It seems to us that on the one hand the state rate-making body ought to recognize an equity in favor of the company and as against the public, and

therefore for a reasonable period of time permit a higher toll to be exacted by the company than would otherwise be proper; but on the other hand that expense thus unfortunately wasted should not be allowed to be permanently capitalized as against the consumer. The equities should be worked off within a limited time, and the consumers not subjected for all eternity to the payment of higher rates than they could get from a competing company.

Let us now turn to the company whose property has appreciated in value, owing to the growth of the community about it. It seems to us that its basis of capitalization for the purpose of fixing maximum rates should be *the capital actually invested,* or so much thereof as has been actually expended for its lawful purposes.

In the first place, that conforms the calculation to the original implied contract between the public and the company at the time of the granting of the franchise. The franchise is granted subject to the right of the community to fix reasonable rates, but the implied understanding is that a reasonable return will be allowed upon the capital invested, in view of the risks of the enterprise. If assured that the public will protect him to the extent of allowing him to make, if successful, a profit proportionate to the special risk of the enterprise, the investor will take that risk; and the percentage of expected profit which he has in mind is a percentage upon the amount of money which he is putting at risk. It may be that he calculates also on a speculative profit in real estate; but if so, he does not expect to get it until he sells the real estate and moves his works somewhere else.

In the second place, from the point of view of public policy, this basis of calculation is well adapted to the encouragement of new enterprises. If assured in case of success a reasonable return, proportionate to the risk, upon the money which is put at risk, the adventurer will adventure his money. He will not refrain from adventuring it, simply because he is told that the public will not pay him a profit in addition on any imaginary amounts that he is not putting at risk.

In the third place, this basis is a practical one, and not dependent on the guesses of paid experts. If accounts are properly kept, the amount of capital invested and the way in which it was invested are matters of permanent record. The ratemaking official cannot make a finding of present value except upon testimony which is notoriously unreliable.

(*b*) *Properties purchased out of surplus earnings over and above high dividends, the facts not being disclosed to the consumer, should be regarded as having been contributed by the consumer and not by the company, and hence should not be treated as capital for the purpose of fixing maximum rates.*

The subject is one which has been much discussed recently, and a broader rule than that above formulated has been contended for by counsel in a case before the Interstate Commerce Commission, in which it is claimed that a certain railroad company has doubled its own capitalization out of the proceeds of overcharges to the consumer, and is now insisting upon a constitutional right to earn a 6% profit upon the capitalization thus doubled.

During the period to which we allude, the old companies (complainant's predecessors) were paying just as high dividends as they dared to allow the public to know about. In order to dispose of the surplus profits they were using them to extend their lines, leaving the public to suppose that the dividends covered all that the properties made, over and above operating expenses.

It does not seem to us to need argument to demonstrate the correctness of the proposition that purchases which the consumer was led to believe were made out of operating expenses are to be treated, as against the consumer, as having been so made. *Non constat* that otherwise the rates would not have been then regulated.

IX.

Assuming Judge Hough's capitalization, however, complainant would have earned in 1905 at the eighty cent rate a return within two-fifths of one per cent of that which has already been sustained by this court.

Here again we calculate without any allowance on account of special franchise tax. Judge Hough has allowed a depreciation item of which about $156,000 should be charged against the 6% percentage of return.

It is true that no assignment of error has directed special attention to this item, but the whole question of the rate of return to be allowed upon

this enterprise is brought up by Assignment XII. We now discuss merely the question whether risk of depreciation over and above the past experience of the company should be considered as a separate item of operating expense or whether such risks are covered by the five, six, seven or higher percentage of return which the State allows on the investment.

The depreciation items allowed in the Milwaukee and San Francisco cases, (87 Fed. Rep., at p. 583; 124 id. at p. 599) corresponded to the item of repairs and replacements in this complainant's accounts (except that the repairs and replacements had been neglected, so that the item referred to a future expense caused by a past omission) and were not, as the Master seems to think (pp. 228-9) a general contingent allowance. While these cases do not sustain the Master, those which he cites from State courts do, as he admits, oppose his ruling. In Cedar Rapids Water Co. *v.* Cedar Rapids, 118 Iowa, 234, 263, the court say that setting aside a depreciation fund may be good business policy, but it is in no just sense a charge affecting the net earnings of the works. The interesting opinion of Judge Garoutte in the San Diego Water case, 118 Cal., at p. 583, reaches the same conclusion.

These last two cases (a fact which the Master overlooked) are sustained by a recent decision of this court. In San Diego Co. *v.* Jasper, 189 U. S. 439, the rates of which the water company complained, which were fixed by the county board of supervisors, permitted a net return of 6% according to the calculation made by the courts, and that calculation did not make any allowance whatever for depreciation over and above repairs. Com-

plainant claimed 6% per annum on the cost of its pipes, and 2% per annum on the cost of its reservoir and dam, claiming that they would be in time ruined by peculiarly destructive agencies in the soil. Mr. Justice Holmes said (p. 446):

> "We will say a word about the opposite contention of the appellant, *that there should have been allowance for depreciation over and above the allowance for repairs.* From a constitutional point of view we see no sufficient evidence that the allowance for six per cent on the value set by the supervisors in addition to what was allowed for repairs is confiscatory."

It will hardly be claimed that the business of supplying gas in the Borough of Manhattan is not considerably less risky than the business of supplying water to San Diego. Judge Hough himself concedes it to be "as nearly a conservative investment as any private manufacturing enterprise can furnish" (p. 409). If 6 per cent including depreciation is a sufficient return for the latter business, surely a much smaller per cent including depreciation is a sufficient return for the former.

This ruling of the court is but an application of long settled and universally recognized principles of political economy. All corporate profits over and above the average rate of interest upon loans on safe security—say 3½% plus taxes—represent insurance against the risks of the business in which the corporation is engaged. If the business is an old, well established and reputedly safe one, the margin between that average rate of interest and the corporate profit tends to become low if the

business is competitive. Riskier businesses call for proportionately higher rates of profit. If the corporation provides a sinking fund of just the right size to take care of the special risks of its own business, that fund represents its normal profit, less the average rate of interest. It matters not how much of the normal profit over and above the average rate of interest goes into the sinking fund and how much into dividend. This depends on the conservatism of the management of the corporation. A conservatively managed corporation makes some provision against contingencies, and takes some risk in order to declare a dividend. We quote from John Stuart Mill's classic work on Political Economy, Book I, Chapter XV, §1, (See also Prof. J. Lawrence Laughlin's Elements of Political Economy, ed. 1902, p. 202):

> "Of the gains, however, which the possession of a capital enables a person to make, a part only is properly an equivalent for the use of the capital itself; namely, as much as a solvent person would be willing to pay for the loan of it. * * * * * What a person expects to gain, who superintends the employment of his own capital, is always more, and generally much more, than this. The rate of profit greatly exceeds the rate of interest. The surplus is partly compensation for risk. By lending his capital, on unexceptionable security, he runs little or no risk. But if he embarks in business on his own account, he always exposes his capital to some, and in many cases to very great, danger of partial or total loss. For this danger he must be compensated, otherwise he will not incur it. He must likewise be remunerated for the devotion of his time and labor. * * * * * The gross profits from capital, the gains returned to those who supply the funds for production,

> must suffice for these three purposes. They must afford a sufficient equivalent for abstinence, indemnity for risk, and remuneration for the labor and skill required for superintendence. * * * * * And the three parts into which profit may be considered as resolving itself, may be described respectively as *interest, insurance,* and *wages of superintendence.*"

This division of profits has not been disturbed by subsequent authorities, although "abstinence" is not now regarded as the basis of the interest charge.

The last item, wages of superintendence, is not a part of *corporate* profits. It is not now generally reckoned as part of the profits of a business at all by political economists, although it is so reckoned by individuals who conduct their own business. In the case of a corporation it does not belong to the stockholders, but to the officers. It is a part of the operating expense. In the case of this complainant, it is paid by the consumer with the other operating expenses and taxes. If the consumer were also to contribute to the contingent fund a sum sufficient to represent the risks of the business, he would thus make the business as safe as a loan upon good security, and as he pays the taxes, he could not be charged with a greater sum on account of profits than enough to enable the company to pay a 3½% dividend.

We have shown in our statement of the facts of the case (pp. 119-24, *supra*) that the Master was entirely misled in allowing a large depreciation item; that nothing in the past experience of the company warranted it; that there was no probability of any new element coming into the calculation

except the removal to Astoria; and that if this is a voluntary and not a forced renewal (as must be assumed if no depreciation is marked off the manufacturing plants) that gives no color to a depreciation item. Judge Hough evidently felt these things by instinct, and for that reason abandoned the Master's basis of calculation, undertaking to substitute the complainant's actual experience in the past for baseless speculation as to new risks for the future. Nevertheless, while modifying the Master's figures, he failed to get away entirely from one of the fallacies which underlay them—the fallacy of assuming that expenses of repair and renewal vary per M, a fallacy which he himself pointed out at pages 402, 403 and 428. He bases his computation on the fact that the average expenditure for repairs and renewals from 1885 to 1905 was 10.89 cents per M of gas sold, taken in connection with the fact that it is between that figure and 11 cents per M of gas manufactured by the complainant (p. 402). He accordingly makes an allowance of 11 cents per M "on the maximum production of complainant's own works to cover repairs, renewals and depreciation mediate and ultimate" (p. 404).

This allowance swelled the operating expenses and to the same extent decreased the net income, although it is not separately mentioned in the decree.

The true method of calculation is by taking, not the percentage per M (see p. , *supra*), but the proportion which the repairs and replacements of each period bear to the total property of the companies which is subject to repair and replacement. We have accordingly made an estimate based on State's Exhibit L (p. 3078), and on

Complainant's Exhibits 78 and 79 (p. 5032). We have made a separate estimate for each of the three periods 1890-4, 1895-9, and 1900-4. We have taken the average of repairs and replacements from Exhibit L and the average value of the complainant's property from Exhibit 78. As the "real estate" was a nearly constant item, and not subject to repair and replacement we have deducted each year (except 1905) from the total valuation the sum of $10,630,894.78, being the average valuation of the real estate as shown by Exhibit 79, and each year also the arbitrary $7,781,000 valuation of intangible property.

This gives us the following tabulation:

Date	*Plants, &c.*	*Rep. and rep.*	*Prop.*
1890-1894	24,099,626.80	881,175.53	.0365
1895-1899	26,358,982.95	893,276.79	.0339
1900-1904	28,221,316.69	996,792.94	.0353
1905	28,954,195.34	974,289.66	.0336
1890-1905	average for sixteen years		.0351

It will be noticed how little variation there is between these five year periods. The average of the five years ending 1904 is about equal to the average for the previous ten years. If we take .0351 as the proper percentage on the valuation of October 31, 1905, in order to conform to the sixteen year average, we find that the amount which should be credited to complainant is $1,016,292.25. The amount credited by Judge Hough is $1,172,359.10, leaving a difference of $156,066.85, which represents the amount which Judge Hough must be taken to have allowed for "depreciation mediate and ultimate" as distinguished from aver

age yearly repairs and renewals. Hence we have the following figures:

Capitalization	$59,831,435.00
Net income	3,224,592.45
Depreciation	156,066.85
Total net income	3,380,659.30

This shows that, if the 80 cent gas law had gone into effect January 1, 1905, complainant would have actually made under it a profit of over 5.65% during that year, even upon Judge Hough's full capitalization.

X.

If property earns 3½%, or at the most from 4 to 4½%, it should not be deemed to be "taken" within the meaning of the Fourteenth Amendment.

The whole subject of the non-confiscatory rate has been in a fog up to this time. Each judge at Circuit has practically adopted the old measure of the length of the Chancellor's thumb. It seems important that some consistent measure should be adopted, which should be capable of reduction everywhere to approximate certainty, and which should mark the upper limit of the jurisdiction of the Federal court to interfere with state local regulations, leaving upon the state the responsibility of giving to each public service corporation the protection to which it is equitably entitled above that limit.

This limit, it seems to us, should be either the rate of *net interest*, which averages about 3½% all over the country, or the rate of *gross interest*, which varies in different parts of the country, and in New York City averages probably about 4%, although some might put it a little higher.

It is now admitted by everybody that there is some percentage below which the state can not go. What it is, by what form of research or reasoning it is to be ascertained in a given case,—is a question thus far left open.

It is generally admitted that there is a difference between the lower limit of reasonableness, below which the state ought not to go, and the upper limit of confiscation, where the Federal courts may and should interfere and stop it.

We believe that the question of fairness and propriety is a very difficult and delicate one for the ratemaking power, but that the question of constitutionality is a comparatively simple one for the Federal court.

In Dow *v.* Beidelman, 125 U. S., 680, 690, the distinction between the merely unreasonable and the confiscatory rate was first noticed by this court, Mr. Justice Gray saying that—

> "the court has no means, if it would under any circumstances have the power, of determining that the rate of three cents a mile fixed by the legislature is *unreasonable. Still less* does it appear that there has been any such *confiscation* as amounts to a taking of property without due process of law."

In the next rate case (Chicago, Milwaukee & St. Paul R. R. Co. *v.* Minnesota, 134 U. S. 418) Mr. Justice Blatchford said that it was unconstitution-

al to deprive a company "of the power of charging *reasonable* rates" (p. 458). Mr. Justice Miller said that a legislative rate must not be "*so unreasonable* as to practically destroy the value of the property" &c.; and this latter and more accurate language was used in the opinion of the court, by Mr. Justice Shiras, in the Gill case, 156 U. S. at p. 657.

In the Reagan case (154 U. S. at p. 397) Mr. Justice Brewer drew the distinction between the inquiry "what under all circumstances would be fair and reasonable as between the carriers and the shippers," which the courts do not undertake, and the inquiry whether the body of rates "is unjust and unreasonable, *and* such as to work a practical destruction to rights of property."

In Smyth *v.* Ames, Mr. James C. Carter observed that no case necessitating a decision of the point had as yet arisen (169 U. S. at p. 515). In that case (p. 547) and in San Diego Land Co. *v.* National City (174 U. S. at p. 757) Mr. Justice Harlan uses the phrase "fair return," but each time the capitalization and not the rate of return was under consideration; and "fair return" is a phrase used by Mr. Justice Holmes in the Jasper case, 189 U. S. at p. 442, in which case the rate of 6% to include depreciation was held sufficient (pp. 445-6).

In Cotting *v.* Kansas City Stock Yards Co., 183 U. S. at p. 91, Mr. Justice Brewer stated the authorities up to date as follows:

> "As to parties engaged in performing a public service, while the power to regulate has been sustained, negatively the court has held that the legislature may not prescribe rates which, if enforced, would amount to a confiscation of property. But it has not held

affirmatively that the legislature may enforce rates which stop only this side of confiscation and leave the property in the hands and under the care of the owners without any remuneration for its use."

The Stanislaus County case (192 U. S. 201) was that of a rural irrigation company. This is a business which is far more risky than an old established gas business in a metropolis. It is liable to destruction, for instance, by the giving way of a dam (see 208 U. S. at p. 367). This court found that 6% was earned under the rates fixed by the local authorities, and Mr. Justice Peckham said (pp. 213, 216):

"It is not confiscation nor a taking of property without due process of law, nor a denial of the equal protection of the laws, to fix water rates so as to give an income of six per cent upon the then value of the property actually used, for the purpose of supplying water as provided by law, even though the company had prior thereto been allowed to fix rates that would secure to it one and a half per cent a month income upon the capital actually invested in the undertaking. If not hampered by an unalterable contract, providing that a certain compensation should always be received, we think that a law which reduces the compensation theretofore allowed to six per sent upon the present value of the property used for the public is not unconstitutional. There is nothing in the nature of confiscation about it. * * * * Much of the capital was invested between twenty and thirty years ago, and to be able still to realize six per cent upon the money originally invested is more than most people are able to accomplish in any ordinary investment, and more than is necessary in or-

> der to give just compensation for property at the time it is used for the public purpose originally intended."

The Circuit Court rulings are little more than attempts to ascertain and apply the decisions of this court. The most elaborately reasoned is the Milwaukee Electric case, 87 Fed. Rep., 577. Both that and the Spring Valley Water case, 124 Fed. Rep., 574, were based largely on evidence as to local rates of return on investments.

In the Milwaukee case, which was one of a company that had spent $7,000,000 wisely and economically in construction and equipment, but the present reproduction value of whose property was not over $5,000,000, Judge Seaman says (87 Fed. Rep., at pp. 585-6):

> "The interest rate fixed in the bonds issued by the company is 5 per cent. The rate which prevails *in this market,* as shown by the uncontroverted testimony, is *6 per cent. for real estate mortgages and like securities.* If the $5,000,000 basis be adopted, surely a better rate must be afforded for the risks of investment than can be obtained on *securities of this class,* in which there is no risk. Upon the basis of $7,000,000, which is more logical and just, the 5 per cent. named in the bonds is clearly not excessive, and should be accepted by a court of equity as the minimum of allowance."

In the Spring Valley case many affidavits as to the prevailing rate of return were received, but the evidence seems to have related to corporate investments instead of real estate mortgages as above. An abstract of them is set forth at 124 Fed. Rep., 582-4. Only one affiant put it at less

than 6% in San Francisco, and nearly half of them put it higher. Judge Morrow said (pp. 598-9):

> "The weight of evidence is clearly in favor of a rate of not less than 6 per cent. per annum. * * * But in the present inquiry all doubts as to facts in controversy should be resolved in favor of the defendants, having in view what was said by the Supreme Court in San Diego Land Co. *v.* National City, 174 U. S., 739, 754, 19 Sup. Ct., 804, 43 L. Ed., 1154, that judicial interference should never occur unless the case presents clearly and beyond all doubt a flagrant attack upon the rights of property. In view, therefore, of all the circumstances, the court is of the opinion that the complainant is entitled to receive at least 5 per cent. as the net compensation it is entitled to receive on the value of its property."

On page 601 he says again that "6 per cent. per annum is the smallest income that can be considered reasonable for the investment under consideration, and 5 per cent. per annum the smallest income which the court can, under all the circumstances of this inquiry, consider as reasonable and just"; holding therefore that 4.40 per cent "is unreasonably low and confiscatory, and amounts to the taking of private property for public use without just compensation, thereby depriving the complainant of its property without due process of law."

In his extensive opinion in the pending Alabama case (169 Fed. Rep., at pp. 992-6), Judge Jones thinks that the state usury law should afford the standard; but the fallacy of that theory is exposed by Judge Hough at p. 408 of this record.

The state usury law is generally ancient in date, representing conditions long past. It is intended mainly to establish a maximum rate, and not to discourage the loaning of money at lower rates. In New York it represents the rate of loans on weak security, while time loans on good security range all the way from four and one-half per cent down under ordinary conditions.

The British case of Canada Southern Ry. Co. *v.* International Bridge Co., L. R., 8 App. Cas., 723, merely relates to the question of a reasonable charge to be judicially fixed as between two public service corporations, in the absence of any statute on the subject. This rate is often higher than the *minimum* rate that a statute may fix; and this again higher than the confiscatory rate which brings the Fourteenth Amendment into play.

In the San Diego case, three of the California Supreme Court judges put the confiscatory limit at from 3½ to 3 per cent (118 Cal., at pp. 581-2. 584, 587).

Summing up these authorities, it appears that this court is as yet uncommitted on the subject of the rate of return, except that 6% is high enough for a California water supply or irrigation company, and that the Circuit Courts disagree about it.

Let us now consider first the function of the Federal court, and then that of the state ratemaking body.

The court acts solely under the Fourteenth Amendment. It acts only when it finds that property is being "taken" without due process of law.

We contend that property is not "taken" as long as it is allowed to earn the current rate of interest on money loaned upon good security; that

hence if that rate is allowed the Fourteenth Amendment is not violated; and that the present case can be disposed of upon this ground alone, as well as those to which Judges Seaman and Morrow refer upon the question of the standard rate, namely, to the doctrine of comity, and to the principle that Federal courts will intervene only in a flagrant case.

We do not of course wish to be understood as arguing that a state ought ever to cut down the net earnings of a public service corporation to the confiscatory limit; or as conceding that the State of New York ever has done so, or has threatened to do so, or that there is any reason to fear that she ever will do so. But the Federal court gets jurisdiction only if the property is *taken* without due process of law. Until property is *taken* the matter remains one purely of state jurisdiction. The state police power may intervene to cut down the normal income of property in the most serious degree so long as the property is not *taken*. It may do so even in the case of property not devoted to a public use, as is illustrated by the recent tenement house case (*infra*, p. 275).

This distinction between property *taken* and property whose enjoyment is unreasonably interfered with is the distinction between confiscation and unreasonable but non-confiscatory regulation, discussed in some of the cases.

The question is not one which has ever been discussed with anything resembling exact reasoning, and we do not know that it is capable of such discussion; but the best reasoning of which it is capable seems to sustain the contention which we have set forth.

Suppose a man to have a sum of money in hand to invest. He may put it in a safe non-taxable security on a 3% basis sometimes, on a 4% basis at other times, on a 3½% basis on the average. He can invest it at ½% or 1% higher interest if he is willing to take the risk of the tax collector, and incur a little personal trouble and annoyance. He can get a higher rate still by putting it into an established business, and a much higher rate by putting it into a pretty risky business. The state ought not to interfere with whatever investment he wishes to make, except for some valid reason of public policy. But is this money *taken* as long as it is earning the average customary rate for safe investments? When *money* is not taken, *other property* of equal value is not taken. The same rate of return must be void or valid, to whichever form of capital it applies. If the money or property are already invested in a business, and are allowed to earn the same rate of interest, are they *taken?* It seems to us that they are not *taken*, but only, if the business is appreciably risky and the amount of return is not correspondingly higher than the ruling rate of interest, *put to undue risk;* and this the state should not do; its constitution, and the laws, ordinances and decisions of its three departments should make such a thing impossible; but none of the three corresponding departments of the Federal government have jurisdiction of the matter. We have some remnants left of Anglo-Saxon local self government; and where there is local self government there is local responsibility. Is it wise that the sense of responsibility be taken away?

It will naturally be asked "What will be the

event if a company has bonded itself at 5%? Is it to be wiped out because it can not earn interest on its bonds?" We may answer "What if the city authorities unlawfully pull down my house as a nuisance, when it is not one? Am I to have no remedy?" There is a remedy, but it is in the State courts, because the Federal constitution has not yet been amended so as to centralize all remedial justice at Washington.

The application of the Fourteenth Amendment must be the same, whether the company has built and equipped itself with borrowed money or not. If the stockholders have borrowed nothing and built with their own money, they are entitled to as good a return as if they had borrowed everything and used none of their own money. And whether they borrowed or not, they ought to have a return which will repay all interest that a normal company would pay on as much of the property as would represent the normal company's loan, and handsome returns on the balance. But that is not the question in this case.

It will naturally be suggested that this reasoning puts the stockholders of a local corporation to a serious risk—a risk of pecuniary loss by the action of the local authorities, without any really efficient relief. They have long been subjected to a similar risk—that of being imposed upon by their own managers without any really efficient relief. These are risks of corporate investment, and there are other risks in all investment and in all life. Dividends occasionally stop, just as a house sometimes stands empty. A man who has lost his life by arson or his brother by murder could in some parts of the country get better justice from the Federal than from the local govern-

ment. And yet we have not yet reached the stage of preferring an efficient bureaucracy at Washington to a perhaps less efficient administration of justice at home. A State which does not treat its corporations fairly will soon suffer and soon repent, and will not the education that it will have received compensate in the long run for the temporary loss that investors will have suffered?

Experience has shown that the line we draw is one that still, however unfortunately, leaves to the judicial branch of the Federal government a great deal of work to do. States sometimes take property, within our definition. But to draw the line at any higher point seems to us to involve an unnecessarily loose construction of the Fourteenth Amendment, and to throw upon the Federal courts a burden that they are not as yet equipped to bear. The public service corporations throughout the nation have reached the stage of practical monopoly. The era of competition has disappeared. Inevitably they are being subjected to government regulation, a thing almost unheard of until the public realized that competition was a thing of the past. If the Federal district judges (subject to appeals to this court) are to sit as courts of general appellate jurisdiction over the state commissions, there must be more circuit and district judges—perhaps more Supreme Court judges—than there are now, or parties interested in other forms of litigation will feel the consequent delay and disturbance of business to an increased extent. They are already beginning to feel it now. Nor is it seemly that a single man, whatever be his title and by whomsoever elected or appointed, shall have general appellate jurisdiction over a tribunal of specialists established

by a state,—a judgment practically final upon questions of fact, for is this court able to read the record and review his work?

The state legislature or commission, on the other hand, should endeavor to reach a result which is fair and equitable and in accordance with the best public policy, both from the point of view of the public and from the point of view of the public service corporation. From the latter point of view there are two main objects which it seeks to attain: first, adequate compensation for the risk involved; and second, encouragement for the investment of new capital in the state. To encourage new capital, special consideration must be given to new enterprises. Generally speaking there is more risk in a new enterprise than in an old one. Hence the new enterprise should be allowed a higher rate of profit, according to the rules of political economy, and according to the customs which have been almost universally observed. As an enterprise becomes old and its profitableness becomes established and generally recognized, and its risk turns out to be comparatively small, political economy teaches that its profit must decline, and practical experience confirms the teaching. Additional capital is obtainable at a comparatively low rate of return, and the market value of the stock rises.

If the recognized analysis of corporate profits (pp. 248-9, *supra*) is correct, and if our theory that the Fourteenth Amendment guarantees to the corporation the element of *interest on capital* is correct, then the function of the state ratemaking officials is to ascertain in the case of each corporation or class of corporations what

rate of return should be allowed as representing the element of *insurance against risk*. For the element of *wages of superintendence* is, as we have shown (p. 249, *supra*), no part of the profits of a corporation, because the wages of superintendence belong to the officers and not the corporation, and because they are paid by the consumer as part of the operating expenses.

When the return realized by a corporation which is relieved from payment of wages of superintendence includes full interest on the capital invested, and full insurance against the special risks of the investment, then the rate of return is reasonable. There is of course a considerable margin of doubt as to where the line should be drawn; but the upper limit of the margin is the maximum reasonable rate. Anything which the company might earn above that would be a monopoly figure. For if there were competition, the company would be unable to earn the amount.

How is the capital to be estimated, upon which this reasonable rate is to be figured? Is it the original cost of the property, or some figure which experts may swear to as its present supposed value, or the probable present cost of reproducing the property as it stands, or the probable present cost of producing other property which would accomplish equally good results. This we have already considered (pp. 200-9, *supra*).

If there be any serious question about the contention which we have set forth, it seems to us that it is a question of detail, which is immaterial to the present appeal—namely, whether the interest rate which is to be the limit of the jurisdiction of the Federal courts is the *gross interest* or

the *net interest* rate. "Interest on capital" in the economical sense represents the amount of return for which the investor will let some one else use his money when the risk is at the *minimum*. It is approximately uniform at any given place and time. It is considered to average about 3½%, although higher at times. Interest is nominally higher on many classes of good security, because, as the word is commonly used, it includes an element of insurance against risk,—risk of the personal property tax—a risk not run by complainant, whose taxes are paid by the consumer. Interest is also nominally a little higher on certain good securities, such as bond and mortgage on local real estate, because it includes an element of "wages" for the annoyance of looking after the investment and collecting the money. On the other hand it is nominally lower on United States bonds because it is offset by the advantages of those bonds to national banks; and on certain other forms of wealth because of their advantage for social distinction or other reasons. This 3½% interest is called at present by political economists *net interest*, while the current rate of interest upon local loans involving a little risk and a little trouble is called *gross interest*, and of course is much more variable (Alfred Marshall, Principles of Economics, Book VI, Ch. VI, §§ 4, 5). It is the *gross interest* which was assumed by Judge Seaman to be the maximum limit of the jurisdiction of the Federal court; and he overlooked the fact that this included the risk of paying taxes, which is one of a pretty deterrent character. The gross interest is not very far off from the rate of profit on an established business, for "capital cannot be permanently loaned at rates

much higher or lower than the returns to capital actually engaged in production" (J. L. Laughlin, at p. 206).

It is unnecessary for the purpose of the present appeal to fix precisely the average rate of *net interest*, or even *gross interest* in the City of New York. Of course both vary. Recently they have been very high; but the constitutionality of a statute of the State of New York certainly does not vary with the timidity of capital from year to year. It does not contract when the money market goes up and expand when the money market goes down. It is the average rate and not the rate for the moment that must decide.

Reference to any standard publication showing rates in New York, whether as to state or municipal bonds, or railroad bonds, or stocks of companies such as the complainant, or loans on first mortgage on improved real estate will show, we are confident, that the *net interest* rate averages about 3½%, while the *gross interest* rate is from one-half to one per cent higher. Just now all rates are particularly high, but for a long period of time the rates for first mortgage loans on good improved property had been 4 to 4½%, although the individual investor ran a risk of being taxed from one-third to one-half of his income therefrom, and although there is some risk (especially of delay) and some trouble about such an investment.

If the rate of *net interest* (say the average rate paid in average times upon good municipal bonds) be taken, then we have a standard which is the same all over the United States, and which can be

applied without taking testimony in a particular case.

If the rate of *gross interest* (say that upon approved local first mortgage bonds) be taken, then each Federal judge will have to receive testimony as to that rate, or else take judicial notice of it.

If any higher rate than this be taken, where can the line be drawn, short of giving the Master, and the District Judge on appeal from him, and this Court, on final appeal, a general appellate jurisdiction to decide not only the question of fact "What will this company make?" but also the question of business judgment "On the whole how much, in view of its special risks, ought it to be permitted to make?" And has not this Court already in effect decided negatively as to this general appellate jurisdiction, in the Jasper and Stanislaus County cases?

XI.

Assuming complainant to have been entitled to 6% on any of its investment, it should not have been given 6% on the whole.

Judge Hough states that he treated it is a "private manufacturing enterprise" (p. 409, foot). Assuming that this entitled it to 6% on the value of its plants, it does not follow that it was entitled to 6% upon the rest of its property. To some extent the evidence is to the contrary.

Much evidence upon these points has been collected from the record (pp. 144-9, *supra*). Thus

Mr. Greene, complainant's own expert as to bulkhead properties, fixes the value of the bulkhead by multiplying its income by twenty; and he explains this by saying that the accepted rate of return upon bulkhead property is 5%. Yet Judge Hough, having accepted his valuation, then holds that the property is *taken* from the complainant within the meaning of the Fourteenth Amendment unless complainant is allowed to make 6% *on the capitalization thus fixed.* It seems to us that the consumer rather than the company is entitled to appeal to the Fourteenth Amendment as to that item.

Companies not approaching complainant in strength of position can borrow in ordinary times at 4.40% (p. 145, *supra*). Surely then complainant could borrow for half its tangible property at 4¼.

There is no evidence justifying a return of 5%, or 4%, on the $12,000,000 franchise item.

Hence what criticism could be made by the company on a schedule allowing 4¼% on half the tangible property, 7% on the balance, and 3½% on the franchise item? Yet that would give an income of $3,120,000, or less than it would have earned in 1905 at the eighty cent rate.

XII.

The information contained in this record is not sufficient to permit the court to make an affirmative decree in favor of the complainant.

The burden was upon complainant to produce sufficient evidence to form the foundation of a decree. Insufficient facts being found, the decree can not be sustained.

(*a*) *Too short a period was selected as the test.*

It might be inferred from the language of the Master (pp. 155, 216), that the calendar year 1905 was selected as the test by consent of the parties. The contrary is true. The selection was made by the complainant's counsel and by the Master himself, against the strenuous and persistent protest of the defendants, and the reason why all the witnesses used the operation of this calendar year 1905 as the basis of their calculations was that they had no other period to use, except the last two months of the year 1904, which seem to have made no particular difference. Defendants insisted that the complainant's book entries and vouchers for the fourteen months ending December 31, 1905, covered a period neither long enough nor typical enough to afford a sufficient or safe test of the expense of making gas; and they also protested against the special exception granted to the complainant by the Master, whereby the complainant was permitted to increase its estimate of operating expenses in the matter of repairs and replacements, while the de-

fendants were not permitted to examine the complainant's books for other periods of time in order to see whether corresponding or greater deductions should not be made in other items (see pp. 779, 802-3, 876-8, 1042-3, 2197-8, 2286, 2288, 3275-8). What evidence they were able to pick up as to the other years was excluded from consideration by the Master when objected to (pp. 3578-80, 3598-9).

It appears in the bill of complaint and in the testimony that during the year 1905 the rates charged by this complainant were under investigation by a legislative investigating committee, and that an act was actually passed in the spring of that year largely reducing the rate which it was allowed to charge the City of New York; while before the end of the year an investigation appears to have been commenced by the State Commission of Gas and Electricity for the purpose of ascertaining what should be the reasonable rate charged to private consumers. There was, therefore, every temptation for the complainant to pad its books for the year 1905. It did admittedly change its form of accounts immediately after the investigation.

The complainant took, and the Master sustained, the position that it had the right to select whatever periods and whatever items in its past history it should choose to disclose, and to confine defendants' inquiry to those particular periods and those particular items; that it might increase the operating expenses as shown by 1905 by proving that the average expenses for some particular item were higher, but that it was not obliged to permit an examination by defendants to ascertain whether they could not prove that

the average of some other item was lower. In refusing defendants' request for leave to make such an examination the Master held that it would be "something far beyond the scope of any *judicial inquiry*", and impossible because "*this case has to be closed in ninety days under the equity rule*" (Testimony, pp. 1047-8). If this be true, it is a concession that *judicial* methods are insufficient to really ascertain the cost of gas, and that this can only be shown by a legislative committee or an administration commission. Certainly it is an extraordinary situation if, when it comes into court, the state, in defense of the consumer, can only look into the particular doors which the gas company thinks it advisable to leave open. The Master's remarks show the need of most extreme caution in attempting to review a system of rates by the machinery of a Federal court.

We have not assigned particular rulings during the trial for error, because the result of the Master's whole course of proceeding seems to us to be a fatal defect of proof.

In Smyth *v.* Ames, 169 U. S., 466, upon which complainant and the Master largely rely, the court based its conclusions upon a careful review of three years' past experience of all the railroads of Nebraska.

In the Reagan cases (154 U. S., 362) it examined three and a half years' experience of all the railroads of Texas.

In the Tompkins case (176 U. S., 167), it went back four years.

In the Covington Turnpike case the experience of "a number of years" was given (164 U. S., 578, 595).

Defendants insisted, as we have above pointed

out, that a longer period than fourteen months should be taken for special investigation; claiming the right to go back to 1900, or at least to 1903, on the one hand, and down to the middle of 1906 on the other. It seems to us that the precedents given by the Supreme Court in the cases just followed should have been followed, and that both requests of the defendants should have been granted; and especially the last one, since the first six months of 1906 included the period when the eighty cent gas law went into effect.

Taking the experience of a single year alone is reasoning but from one particular. Even if complainant were entitled to the presumption that its strenuous opposition to the examination of its books for earlier and later periods was opposition in good faith, it is easy to pad the accounts of any one year without knowing it. Thus a man who makes up his annual household accounts on the first of July may have ordered his next winter's coal supply and paid the bill in June, or the bill may come in and be paid in July. A company may, like the individual housekeeper, pay for its coal or its oil twice as much in one year as in another. It may, as it seems to have done here, make much fewer repairs and replacements in one year than another. It may come out worse on its by-product account. It did admittedly have unusual items, such as the expenses of the first legislative investigation for twenty years, and the expenses, and arrears of interest, incident to an unsuccessful attack upon a new form of taxation.

Moreover there may be a "lean year." The constitution does not guarantee a profit at every moment of time, any more than it guarantees a profit at every mile of route, or from every class

of traffic (See Harlan, J.'s opinion in Ruggles *v.* Illinois, 108 U. S., 526; opinions of the court in the Wellman case, 143 U. S., 339, and the Reagan case, 154 U. S., at p. 412). There may be a time when old equipment does not do the best work, or when prices and wages are especially high. If over a considerable time there is profit enough to carry the company over the lean year, the constitution is satisfied.

(*b*) *The experience of the other companies, as well as of this complainant, should have been shown.*

The New Amsterdam Gas Company during the year ending October 1, 1905, seems to have made gas at 29 cents, or, allowing for loss in distribution, at 30 cents; and the corresponding figures of the Central Union Gas Company for the same period were about 26½ cents and 28½ cents, respectively, although the New Amsterdam's candle power was higher than complainant's (pp. 2325-6). The Master explains these figures in various ways (pp. 241-2). The testimony as to these matters is in dispute and we do not go into them further than to point out that even the Master admits an advantage to the New Amsterdam Gas Company as against the complainant, of 1.61 cents per thousand, "which is practically all accounted for by difference in cartage, as to which the New Amsterdam Company has special advantages. The item of station cost, which is less because of the New Amsterdam Company having but one station as against several used by complainant, and other similar items."

It is also to be noticed that during that year its

item of "cost of gas mfg. under agency agreements" is 34.04 for gas "made," that is, bought from the subcompanies, and 34.82 for gas "sold", as against 32.42 and 33.17 respectively for its own gas (p. 219). But the subcompanies' figures include a profit of 10%. This shows that their average rate of production (including those less advantageously situated as well as the New Amsterdam and Central Union Companies) was about a cent and a half less per thousand than that of the complainant.

Complainant's view seems to be that whether by reason of its having an old-fashioned plant, or a disadvantageous location, or too great a subdivision of plants, or inferior facilities in other respects, it could not make gas in 1905 as cheaply as its subcompanies; that the result of its new facilities in 1906 is as yet speculative, or at least is not before the court; that its capitalization is very large, owing to the unearned increments aforesaid; and that therefore an eighty-cent rate would not give *it* as much net profit as *it* ought to receive in order to rank as a prosperous company. From this premise it deduces the conclusion that the statute is unconstitutional as to *it;* in other words, that a statute establishing a uniform maximum rate for the sale of gas in a given locality is unconstitutional unless *every* gas company, well or ill situated and managed, can make a good profit; or else the statute is unconstitutional *as to the ill situated or ill managed company,* so that it must be permitted to go on charging a higher rate while better situated or better managed companies are held down to the statutory reduced rate; thus establishing as against the latter what is known in the railroad business as a "differen-

tial." This is surely absurd. *It would violate the rights of the well-managed company under the Fourteenth Amendment, as construed in the Cotting case,* 183 U. S., 79, 114-15.

To quote the words of this Court in the Gill case, 156 U. S., at p. 657:

> Given the case of a general law prescribing rates to all companies, can the courts inquire whether such rates are reasonable, and may they find that as to one company the prescribed rates permit it to do business at a profit, and as to another, whose facilities are inferior, or where expenditures are greater, the rates afford no profit? And will the fate of the law, as to its validity, depend, in each case, on the result of such an inquiry?

We are not aware that the courts have ever gone to this extent. It must be remembered that in the railroad rate cases the subject of discussion is a schedule establishing, not a general rate as if the whole state were a single "zone" under the Austro-Hungarian system, but a special rate as between each pair of localities. Hence as a usual thing each special rate applies to but a single railroad company; and for this reason each railroad company, as in the Reagan case (154 U. S., 362), is to a large extent to be considered separately. But in that case, as in Smyth *v.* Ames, 169 U. S., 466, the experience of the other companies, as well as of the complainant, was made the basis of consideration.

The question is analogous to that decided in Moeschen *v.* Tenement House Department, 203 U. S., 583. There was no opinion filed by this court, but the opinions of the state courts in the same case are cited as authorities, and therefore

are to some extent adopted (89 App. Div., 526; 179 N. Y., 325); and the remarks which we shall quote were not *obiter*, but essential to the decision. It appeared that the state regulation under consideration in that case would in some cases impose slight hardship, while in other cases it would almost or quite wipe out the owner's equity in the property affected. The plaintiff's case was one of the latter class. In one of the opinions thus referred to by this court, Judge O'Brien said (89 App. Div., at p. 538):

> "We have not overlooked the contention based upon the relation of the cost of removing the school sink and replacing it by other accommodations, to the equity which the defendant has in the property. It would appear that the effect of the change would be to practically wipe out the defendant's equity and thus, so far as she is concerned, the law will if enforced be a great hardship. It will be noticed that her equity is about one-third of the full value of the premises; but, apart from this, if the extent of the injury which would be inflicted upon a particular individual was controlling upon the constitutionality of the act, then it would be difficult if not impossible to have any fixed criterion for determining its constitutionality, because, with respect to the value of certain premises on which a school sink was required to be replaced, *the cost as compared with the value of the property might be very small, whereas in the case at bar it equals and we can conceive of instances where it might exceed the equity of the owner.* We have examined the affidavits upon the subject of the character of the premises, the conditions prevailing and the advisability of the changes, but think that they present considerations which are proper

> to be addressed to the Legislature and not to the court."

In the other of these opinions, Judge Bartlett said (179 N. Y., at p. 330):

> "It is not the hardship of the individual case that determines the question, but rather the general scope and effect of the legislation as an exercise of the police power in protecting health and promoting the welfare of the community at large."

Upon the argument below we stated the *ultimate fact* to be the percentage of return which a well-equipped and well-managed company would earn upon its capitalization under present conditions at the eighty cent rate; the *ultimate question of law* to be whether that percentage of return is confiscatory.

We criticised the Master's handling of the case because it did not afford us an answer to this question. The court answered with a counter-criticism; namely, that we were dealing with an ideal company, and that there might be no actual company which met the requirement (from which we suppose the inference to be drawn that there might be no company well enough equipped to be able without considerable change in its equipment to earn the necessary percentage of return, and that therefore there might be a lean year during which little or no return would be had, while the equipment was being adjusted to modern conditions). Our reply to this counter-criticism was twofold: First, that so far as appears one or more of the subcompanies may be well enough equipped and managed to earn the necessary percentage. We are not fully informed about their cost

of operation. We have no evidence at all upon the other necessary element, to wit, their genuine capitalization. And secondly, it is not necessary for the purposes of the constitution that they make any particular return the first year, provided that within a reasonably short future period they do earn on the average a constitutional compensation, including the first year in the average. In the history of all corporations there are periods of time, just as in the history of all corporations there are departments of business, in which no compensation is earned, or in which even a loss is made. It is the average which the constitution deals with, as has been more than once shown when complaint was made by railroad companies that statutory passenger rates were insufficient to pay for the passenger business, considered by itself.

The majority of the cases in this court upon the question of rate regulation of public service corporations, as affected by the Fourteenth Amendment to the Constitution, have involved the consideration of railroad rates, or rates of water companies. But different railroad companies are not carrying on business under the same conditions; they run through different territory; the classes of traffic required by the different territories are different; the population to be served is different; the necessary cost of construction differs in accordance with the gradients, the number of rivers to be bridged, and generally the character of the country over which the railroads operate. So also as to water companies; the source of their supply is different; the cost of obtaining it is different; so that what is a reasonable charge for one company would not necessarily be

for another, even in the same city. Gas companies, stock yard companies, and electric lighting companies, on the other hand, operate under substantially the same conditions, serving customers in the same territory, with no necessary difference in the cost of production and with no necessary difference in the cost of plants. Hence while a rate which might be reasonable as to one railroad company might be unreasonable as to another; and a rate which might be reasonable as to one water company might be unreasonable as to another; yet, generally speaking, the same rate would be reasonable for all gas companies serving the same territory and under the same conditions.

When, therefore, the question arises as to the reasonableness of the railroad rate prescribed by the Legislature or by a Commission, it may be solved by a showing of the facts which are peculiar to such company, namely, the proper capitalization of its plant and business facilities, the amount which will be realized on its traffic, and its operating expenses; so that the rate on one railroad from A to B may differ from the rate on another railroad from C to D, the distances being the same. But as to gas companies a different situation arises. If there is any reason why a certain rate is remunerative to one company and not to another, that reason would depend upon matters which cannot properly govern the amount of the rate, namely, the amount of its capitalization, the economy of management, the exercise of good business judgment as to the selection of the locality and construction of its plants, and other matters of the same kind.

This reasoning leads to the result that there is

not sufficient evidence to sustain a decree in favor of the complainant. The experience of a particular company during a particular year (the test year being selected by itself), is insufficient—even when supplemented by evidence about its experiences for other years as to a certain item (that item being also selected by itself). It is merely a reasoning from particulars—in fact, from a single and suspicious particular. It is as if a real estate expert for the valuation of property were to base his opinion upon the sale of a single piece of other property somewhere in the neighborhood.

Cases have sometimes been sent back to a Master under such circumstances for the purpose of taking further testimony.

Complainant is estopped from asking any such favor here. The defects in its case were due to its own deliberate withholding of further information, and its successful attempt to put the state and city into the dilemma of either having to go without information of the experience of other companies and other periods of time, or else blindly putting in evidence the books of the gas companies, on the chance of being able thereafter to find out what they contained which the companies were preferring to withhold, and the certainty of their being used by the companies, so far as they might favor their side of the litigation. The state and city, put in this dilemma, wisely refrained from disturbing the *status quo*.

By so refraining, they allowed complainant to subject itself to an estoppel from which there is no escape. It has deliberately refused to produce sufficient evidence to make out a case for itself. It has disregarded all warnings. It has refused to permit the state and city to inquire

into the true facts. It must stand upon the record which has been made, and that record can result only in a dismissal of the bill.

XIII.

The provision as to pressure is severable from the rest of the statute, and therefore does not affect the foregoing argument.

It is in form an entirely separate and independent provision. The provisions as to rates are in section 1. The first sentence of section 2 concerns candle power. The second sentence is the pressure provision, and is as follows (Record, p. 31):

> "The pressure of illuminating gas in any service mains in the said city at any distance from the place of manufacture shall not be less than one inch, nor more than two and one-half inches."

The report of the Stevens Investigating Committee of 1905, which gave rise to this legislation, shows that the pressure provision was intended for an additional guarantee to the consumer, in order that the candle power provision should not be evaded by increasing the pressure (p. 132). The report is annexed to one of the answers. We do not claim the right to refer to it because it is annexed to an answer, but because it is a document which forms part of the history of the statute, and of which the court can therefore take judicial notice (Holy Trinity Church *v.* United

States, 143 U. S., 457, 463-5; Johnson *v.* Southern Pacific Co., 196 U. S., 1, 19).

The test of severability is laid down in Reagan *v.* Farmers' Loan & Trust Co., 154 U. S., 362, 395, as follows:

> Any independent provision may be thus dropped out if that which is left is fully operative as a law, unless it is evident from a consideration of all the sections that the legislature would not have enacted that which is within, independently of that beyond its power.

The tests as stated in the Employers' Liability Cases, 207 U. S., 463, 501, are whether "effect may be given to the legal provisions by separating them from the illegal", and whether "it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated." In the case last cited the provisions under consideration were held not to be severable; but the argument in support of the decision particularly well illustrates our contention here (see pp. 491-502). The pressure provision being merely an additional guarantee to the consumer that his gas shall be cheapened without loss of illuminating power, striking it out would be simply striking out one provision for the enforcement of its main purpose, and it is therefore a case parallel to that of the penalty clause which was eliminated from discussion in the Reagan case, *supra*.

XIV.

The pressure clause is constitutional.

The main point insisted upon during the hearing by the complainant was that the pressure could not practically be kept uniform on account of the difference in height above sea level of the different parts of Manhattan Island. Defendants' theory was that the complainant could regulate the pressure in these cases by means of district governors. Complainant's expert insisted that this method was unpractical, although he admitted that it was in use in other cities. How expensive the construction and maintenance of the necessary district governors for the elevated portions of the island would be, does not appear. The burden of course was upon complainant to show that it would be too great. Afterwards Edgerton, a witness on behalf of the State, proposed an alternative system which the Master reports would cost $4,000,000.

The master sums up the evidence as follows (p. 250):

> "Under the distributing system as now existing and in operation, it is not possible to fulfill the statutory requirements as to pressure. It would, however, apparently be possible to remedy this condition, at least to some degree, by dividing the city into different districts, according to the varying levels and by regulating the pressure in each by district governors. The efficacy and safety of such governors is not free from doubt and the evidence affords no sufficient basis for an estimate of the cost of their installation or the

> expense of making the necessary changes in the system of mains."

Under the rule respecting the burden of proof in such cases (pp. 188-9, *supra*) this finding would seem to settle the question. If complainant has not succeeded in providing the court with a "sufficient basis for an estimate" as to the expense involved, it is the necessary inference, in support of the action of the state authorities, that the expense is not so great as to render the provision unconstitutional. The court has no jurisdiction to consider doubts as to efficacy and safety.

Judge Hough however takes the Edgerton alternative proposition alone, disregarding the district governors altogether; and he seems to think that the state is without power to compel the complainant to adopt any new appliances that will not bring it additional profit. His remarks are as follows (p. 420):

> "By the expenditure of about $4,000,000 for construction of mains and valves alone, exclusive of any pumping stations or other apparatus it might be possible to establish and maintain the pressure called for by these acts. Such a thing is commercially impossible, and even if it were done (of course at complainant's expense), it remains commercially impossible since the other parts of the statutes cut off the surplus income out of which alone complainant could be expected to perform the work. A change by means of new capital would be impossible, because when made it would not add a dollar to income."

The position that a state cannot compel a citizen to incur expense upon his property without

receiving compensation therefor has been so long exploited that its reappearance here is difficult of explanation. The more recent cases are cited in Moeschen *v.* Tenement House Department, 203 U. S., 583. That case involved the constitutionality of a provision in the New York Tenement House Act (set forth in full at 179 N. Y., 326) requiring tenement house owners to remove school sinks and put in water closets of prescribed construction. The constitutionality of the law was contested under both the State and Federal constitutions. The plaintiff in error owned a tenement house valued at $16,500, in which her equity was only about $3,500 (p. 329). The expense to which she was being put might range from $750 to at least $1,750 (p. 333). It was not claimed that there would be any corresponding increase in rental, if indeed there would be any increase at all. The constitutionality of the statute was sustained by every judge of every court before whom it came for consideration. Among the cases cited by this court in affirming the judgment were Gardner *v.* Michigan, 199 U. S., 325, where owners of garbage were required to part with it without compensation, although it could have been sold for a substantial price; Health Department *v.* Rector, 145 N. Y., 32, where tenement house owners were required to put in running water, and in which the subject is extensively considered in an opinion of Judge Peckham, often since quoted; and Commonwealth *v.* Roberts, 155 Mass., 281, where judgment was ordered upon a verdict against a property owner for refusing to put a water closet into his house upon order of the Board of Health. Mrs. Moeschen was doubtless obliged to make the improvement to her house "by means of new cap-

ital"; for the Tenement House Department was hardly willing to permit delay until $1,750 should have been saved out of the surplus income of a $16,500 house. Statutes requiring railroads to put in safety appliances may not correspondingly increase the net income of the railroads, but they must be complied with by all railroads, poor or rich, and the expense of complying with them is properly capitalizable as new construction or equipment.

If it be true that the Edgerton plan would cost $4,000,000, the other plan can be adopted; but complainant can raise even the amount named, and pay the necessary interest thereon, without having its property taken without due process of law. There is plenty of margin after the necessary corrections have been made in the other figures.

XV.

Assuming that an injunction were proper in this case, it should have been conditioned upon complainant's reducing its charge for gas to whatever sum would be deemed constitutional, nunc pro tunc as of May 1, 1906, and paying back to the consumers all amounts which it had collected from them over and above that figure.

Under Judge Hough's opinion, an 84-cent rate would have been constitutional. Nevertheless he entered a decree upon which complainant is entitled to retain all amounts that have been paid in

at the old dollar rate, and to collect at that rate from the consumers who have not yet paid.

Whatever may be the finding of the court upon this tangled record, the 80-cent gas law is not an absolute nullity. It merely stands suspended in operation until conditions change so that the court is able to find that the rate is remunerative. Any decree enjoining the enforcement of the statute would therefore contain a clause permitting an application at its foot for the reopening of the case (Smyth *v.* Ames, 169 U. S., at pp. 447, 550; 64 Fed. Rep. at p. 189); and this is recognized by Judge Hough both in his opinion and in his decree (pp. 403-4, 434). The word "void" is therefore a misnomer in connection with this statute, whatever be the result of this suit.

On the other hand, an application for an injunction is to a certain extent an application to the discretion of the court. If Judge Lacombe had enjoined only the collection of the penalties, the Attorney-General, or later the Public Service Commission, would doubtless have commenced a proceeding for mandamus or mandatory injunction in the State courts. A defense of unconstitutionality would have been interposed. The question would have been tried out in the State courts under the state constitutional right to trial before a judge or referee to hear and determine, without the intervention of a Master. Very likely different findings of fact would have resulted; but the whole case could have come here upon writ of error. The decision of this court in the Young case has given to the public service corporation a choice of forum, while the state has no choice of forum, but must sue in its own court. In the Young case this court has said that the jur-

isdiction should be but cautiously exercised. We respectfully submit that to give such a complainant its choice of forum, to try the case in a manner which the state constitution disapproves, to reach upon the findings thus obtained a conclusion that the statutory rate is four cents too low, and then to make a decree which requires the payment by the consumer of an amount of twenty cents above the statutory rate for the whole period of the litigation and until the legislature can again act on the controversy, is contrary to comity, contrary to equity, and a conclusion at which the public mind has good right to be shocked.

The power to enjoin being discretionary, the court has the right to place any proper condition upon its exercise. What condition can be more proper than to say to the complainant—"It is discretionary with us to remit you to the state tribunal. It is discretionary with us to remit you to a trial at law. As a condition of coming into equity and having your case tried by the Federal procedure, you must do equity by charging no higher a sum than is found by that procedure to be constitutional?"

There is no decision exactly in point, but the conditions which have been placed upon equitable relief under the maxim "He who seeks equity must do equity" are discussed in 1 Pomeroy's Eq. Jurispr., §§ 385-6, 389-93, and particularly in the passage quoted from him in De Walsh *v.* Braman, 160 Ill., 415, 420-1 (see also Veazie *v.* Williams, 8 How., 134, 161; Willard *v.* Tayloe, 8 Wall., 557, 567-9; People's Bank *v.* Marye, 191 U. S., 272, 281-2, 285-8, and cases cited; 3 Dill., 19, 34; Farmers' Loan & Trust Co. *v.* Denver Co., 126 Fed. Rep., 46, 51; Thomas *v.* Evans, 105 N. Y., 601, 615;

Fanning *v.* Dunham, 5 Johns., Ch. 122, 142-7, and cases cited; Stanly *v.* Gadsby, 10 Pet., 521; Tiffany *v.* Boatman's Inst., 18 Wall., 375, 385; Knoth *v.* Manhattan Railway Co., 109 App. Div., 802, 807-10, affirmed 187 N. Y., 243).

Judge Hough thought that the state's equity to the enforcement of a constitutional law was not strong enough to warrant the imposition of a condition upon the complainant, and also advanced the singular proposition that the litigation might terminate if he imposed the condition, so that this court would not decide a legal question which interested him (p. 429).

If this court agrees with him, as to the equity of the state, the question still remains as to the procedure to be adopted when the Federal courts are asked to take cognizance of local controversies of this nature, ousting the state tribunals and the state procedure. They can impose what conditions they please upon the exercise of such a jurisdiction. It seems to us that the condition which we propose is eminently proper, would tend to prevent disharmony between state and nation, and should be adopted *ut sit finis litium.*

Federal jurisdiction over this case can be sustained only by adopting a new principle of equity procedure. Why not accompany the new principle, if adopted, with a condition so equitable, and so analogous to what has already been decided under circumstances somewhat similar?

Respectfully submitted,
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Of Counsel for Appellants.

APPENDIX A.

Franchises Claimed by Complainant.

It is not until very recently that complainant has claimed the ownership of perpetual franchises; although it has claimed the right to operate north of 79th Street in perpetuity under an old Tweed franchise commonly called the State Grant of 1871.

As recently as the time when the testimony was taken in the case reported as Matter of City of New York, 56 N. Y. Misc., 306, 309, no perpetual franchise was claimed to exist south of 79th Street, nor were the present claims as to the extent and perpetuity of the New York, Manhattan and Metropolitan franchises as yet advanced. The question then arose in a proceeding for the condemnation of a portion of the 18th Street plant, within the territory formerly belonging to the Manhattan and Metropolitan companies. Nevertheless, complainant claimed only under the Municipal company's grant. That was a thirty year grant which confessedly expired on March 22, 1907. Its approaching expiration seems to have incited the complainant to a voyage of discovery among the old franchise documents whose importance had been supposed to have ceased.

Of the grants now put forward by complainant, we contend that the first four (the New York, Manhattan, Metropolitan and Harlem) have expired; that the fifth (the Anthracite) was void *ab initio;* and that the sixth (the State Grant of 1871), which is not claimed to have become complainant's property, was so framed that it could not pass into the management of a corporation.

As applicable to some or all of these various grants, we refer to the following well settled principles:

(1) In construing a grant of lands, franchises or privileges by the State, every intendment is to be taken in favor of the public and against the grantee, as the grantee is presumed to have drafted the paper, and to have made it as strong as he could in his own interests (Charles River Bridge *v.* Warren Bridge, 11 Pet., 420; Coosaw Mining Co. *v.* South Carolina, 144 U. S., 550, 561-2; Freeport Water Co. *v.* Freeport, 180 U. S., 587, 599; Cleveland Electric Co. *v.* Cleveland, 204 U. S., 116, 129-30). It is also laid down by the courts of the State of New York (Auburn & Cato Plank Road Co. *v.* Douglass, 9 N. Y., 444, 451; *In re* N. Y. & H. R. R. Co. *v.* Kip, 46 N. Y., 546, 551; People *v.* Broadway Ry. Co., 126 N. Y., 29, 37; People *ex rel.* 3d Ave. Ry. *v.* Newton, 112 N. Y., 396-399; Trustees *v.* Vail, 151 N. Y., 463, 472; Skaneateles Case, 161 N. Y. at p. 163, and cases cited).

(2) The application of the foregoing rule is not affected by a provision in the grant that it is to be benignly construed (People *v.* Chicago Theological Seminary, 174 Ill., 177, 181; 189 Ill., 499; 188 U. S., 662, 675, 676-7).

(3) A person to whom real property has been granted, demised and to farm let, if he holds over after the expiration of his term, becomes a tenant at sufferance or from year to year (Schuyler *v.* Smith, 51 N. Y., 309; Morgan *v.* Wm. Harison Lim. (1907), 2 Ch. 137). By holding over he cannot get adverse possession (Driggs *v.* Phillips, 103 N. Y., 33, 41; Deshong *v.* City of New York, 74 App. Div., 234). This principle applies to a

tenant of incorporeal real property, such as an easement or franchise to lay pipes and mains, as much as to a tenant of any other real property.

The grants should be considered in chronological order, as the practical construction of the first grant in order of time was undoubtedly in the minds of all parties at the time of the later grants; although complainant ingeniously reversed the order in its discussion of these grants in the court below.

The New York Gas Light Company.

This company was incorporated by the Act of March 26, 1823, chapter 85. Certain gentlemen were incorporated under the above name and it was provided that "by that name they and their successors may have *perpetual* succession." The powers of the corporation were to be as follows (p. 4826):

> "and by the name and style aforesaid, the said corporation shall have full power and authority to manufacture, make, and sell gas, to be made of coal, oil, tar, peat, pitch or turpentine, or other materials; and to be used for the purpose of lighting the said city, or the streets thereof, and any buildings, manufactories, or houses therein contained and situate; and to enter into, make and execute any contracts, agreements or covenants in relation to the objects of this incorporation, and of enforcing the same, and be capable of purchasing, taking and holding any estate or property, real or personal, as shall be necessary to give effect to the purposes of this incorporation, or for the accommodation of their business and concerns."

The grant was limited by the following proviso (pp. 4826-7):

> "*And provided, also,* That no public street, lane, or highway in the city of New York, shall be dug into, or in any wise injured or defaced without the permission of the corporation of the said city first had and obtained."

It will be noticed that no franchise for the occupation of the streets was granted by the legislature. It is clear that the proviso was intended as confining the question of street franchise to the proper authorities of the City. No restrictions upon the action of these local authorities is expressed or implied. They had the right to affix to their permission for digging up the streets such conditions as they should see fit, so far as such conditions would not contravene any of the provisions of the statute.

There is no better indication of the true construction of a document, whether a statutory grant or a contract, than its contemporaneous construction (Insurance Co. *v.* Dutcher, 95 U. S., 269, 273; Steinbach *v.* Stewart, 11 Wall., 566, 576; Woolsey *v.* Funke, 121 N. Y., 87, 92; United States *v.* Pugh, 99 U. S., 265, 269; United States *v.* Alabama R. R. Co., 142 U. S., 615, 621).

The statute became law on March 26. The incorporators immediately applied to the city authorities for a franchise thereon, and this franchise was granted by an agreement dated May 12. signed by the Mayor and accepted by the grantee. By this agreement the city did "hereby grant, demise and to farm let" to the corporation and

its successors the sole and exclusive privilege of "laying or placing underground pipes" in that part of the city south of Grand and Canal streets "to have and to hold and to enjoy the same" until May 12, 1853 (pp. 5081-2).

By accepting this grant, the corporation accepted the time limitation thereof, and the joint action of the Common Council, the Mayor and the gas company confirmed what in its absence would have been the natural construction of the statute, namely, that the power to fix the extent and duration of the franchise was in the city authorities. The city authorities had the same jurisdiction over the franchise limits as to time that they had over franchise limits as to space; and it was never claimed, during its sixty years of operation as an independent company, that the grantee could extend its mains north of Grand and Canal streets.

In 1853 the franchise expired. Its possession of the streets was not disturbed, and it went on as before until the consolidation, when it merged with a company which had a franchise still running.

The Master adopted the extraordinary theory that the complainant must be held entitled to whatever it might claim to own, so long as the contrary had not been adjudicated in some other form of action, although its claim might be entirely baseless, or might be terminated by immediate revocation of its rights. This theory, first applied to the real estate (p. 164) was again applied to the franchises (p. 192). Judge Hough disapproved it (although not until it had already led to the litigation next hereinafter mentioned), but made

no ruling as to the validity of either the New York, Manhattan or Metropolitan franchises.

It will be remembered that the state is the sole legal protector of the individual consumer, and that the city has no right or duty to represent him (pp. 3-4, 162-3, *supra*). The Master's decision seemed to put the defendants into a curious position. The city had the right to grant franchises, was obtaining its own supply of gas from the complainant, had no other source of supply, was not asked by any consumer to interfere with the present arrangements, and had no reason for modifying existing arrangements except as to the price of gas to be furnished to itself. The state on the other hand was the protector of the consumers, but had granted to the city the right to grant franchises by a statute over which the Attorney-General had no control. The upshot was that the Attorney-General, after considering the Master's opinion, applied for leave to bring an action in the nature of a *quo warranto* to vacate the charter of this complainant. The opinion of the Appellate Division sustaining the denial of such leave (the matter could not be appealed to the Court of Appeals) is reported as Matter of Attorney-General, 124 App. Div., 401, 407-8). It is applicable to the four grants which have expired (the Anthracite Grant and the State Grant of 1871 having been for some reason omitted by the Attorney-General in his application). Justice Scott discusses the matter as follows:

> "The several statutes under which the constituent companies were organized gave to them power and authority to manufacture, distribute and sell gas, with incidental power and authority to lay pipes or mains in the

public streets and avenues, subject, however, to the qualification that no street or highway should be dug into for the purpose of laying such mains without the consent of the municipal authorities first had and obtained.

The franchise to be a corporation and to transact business comes from the State, as does also the right, incidental and necessary to the enjoyment of the franchise, to lay pipes and mains in the streets, to maintain them when laid so long as necessary for the beneficial enjoyment of the corporate franchise, and for that purpose to dig into and open the streets. The State might have given authority to open the streets without any consent from the local authorities and has done so in many cases, but in general and particularly in the case of the constituent companies mentioned in the petition it has required the consent of the local authorities to be obtained before a street surface should be disturbed for the purpose of laying gas mains.

In these cases the right to lay mains comes from the State, *permission to exercise the right being made dependent upon the consent of the local authorities. It was competent for the local authorities to give a general consent covering a fixed period of time, or running during the life of the corporation,* or to give consents from time to time as the necessity for opening the street surface arose. *The first alternative was chosen,* and to each company was given a general consent, *limited as to areas to which it applied, and as to the time during which it should remain effective.* These periods of time have expired, and while it was undoubtedly competent for the local authorities to extend the time, or to have granted new consents, it appears that this had not been done, unless acquiescence amounts to such a consent (People *ex rel* New York & Richmond Gas Co. *v.* Cromwell, 89 App. Div., 291). The contention of the At-

> torney General is that with the expiration of the time limited by the municipal consent for the laying of pipes then also expired the right to maintain and use those already laid. Although we do not consider it necessary to pass upon this question, we may say that the argument in favor of the Attorney General's contention in this regard appears to us to be far from conclusive. It is sufficient to say that the matter is one for consideration by the municipal authorities, and is no concern of the State" [etc.].

The dissenting judge concurred in the proposition that a corporation by holding over in possession of such an easement or franchise after the expiration of its term afforded no ground for forfeiture, and that the questions arising in respect thereto are to be adjusted between corporation and city without the intervention of the State (*Id.*, p. 409).

This case leaves open the question whether the thirty year limit in the city's franchise grant relates to the maintenance of the pipes, or only to the right to put them in. The latter construction is unnatural in view of the language of the grant, which is that of a lease of real property. It is hard to conceive why a time limit should have been put on at all, if it did not apply to the maintenance of the pipes. Moreover the grant was exclusive so far as it existed at all, and it was understood by the company that so far as it was exclusive it lapsed at the end of the charter period (p. 92, *supra*; and see the Metropolitan franchise, p. 303 *infra*). The whole question is settled by the presumption against the grantee in such a conveyance (p. 292, *supra*). The case also leaves open the question whether acquiescence in hold-

ing over by a corporation amounted to a new consent. But there is no reason for any distinction between the rights of a holdover after the expiration of a limited term in an easement to lay gas pipes, and those of a holdover after the expiration of a limited term in a corporeal hereditament. If one holding over by tacit consent after the expiration of the term in possession of an easement acquires any further right therein than as tenant at sufferance or from year to year, what right does he obtain?

An easement may of course become vested by adverse possession if the tenant is proved to have set up an adverse claim, and the period of the statute thereafter expires. No such claim was ever made by this complainant or any of its constituent companies. The testimony of Mr. Lees (p. 92 *supra*) makes it extremely improbable that any such thing could have occurred at any time; and the company's own reliance on the Municipal franchise, in a controversy between itself and the City of New York (p. 291, *supra*), is an admission that no adverse claim was outstanding.

The Cromwell case, cited in the opinion above quoted, does not concern the status of a company holding over after a limited tenancy. It held that in the absence of any other evidence, the fact that a corporation had been supplying gas to three towns and their inhabitants for a period of nearly fifty years authorized an inference that the necessary consents had been obtained from the local authorities of those towns.

The Manhattan Gas Light Company.

This company was incorporated by an Act of February 26, 1830, with the following power (p. 4830):

> "with full power and authority to manufacture, make and sell gas, to be made of coal, oil, tar, peat, pitch and turpentine, or other materials, and to be used for the purpose of lighting the city of New York, or the streets thereof, and any buildings, manufactories or houses, therein contained and situate, and to lay pipes for the purposes of conducting the gas in any of the streets or avenues of the said city."

The act incorporated (although not in the form of a proviso) the proviso above quoted from the Act of 1823 (pp. 4826-7):

> "and that no public street, lane, or highway, in the city of New York, shall be dug into, or in any way injured or defaced, without the permission of the corporation of said city first had and obtained."

If the first of the two passages above quoted contained a legislative franchise for the purpose of conducting gas in any of the streets and avenues of the city, it could not be restricted by the city authorities, and their permission would only be a right to regulate such use of the streets. They would have had no more right to limit the legislative grant as to space than as to time.

The other construction, leaving it free for the city authorities to limit their permission both as to space and as to time, is supported by the similarity of much of the language to that of the Act of 1823; for there is much indication that the legislature intended to grant to the Manhattan company the same nature and extent of power which it had granted to the New York company, and to put into the hands of the city the same

power which it had, and had exercised, in the New York company's case.

The practical construction given to the statute by the parties under the act of 1823 had been, as we have shown, that the statute delegated to the city the right to restrict the street franchise both as to space and as to time. In quoting the exact language of the former statute as to the city's powers, it was therefore to be presumed that the legislature intended the construction previously adopted to apply to the new statute (Copper Queen Mining Co. *v.* Arizona Board, 206 U. S., 474, 479; New York, New Haven & Hartford R. R. Co. *v.* Interstate Commerce Commission, 200 U. S., 361, 401; United States *v.* Falk, 204 U. S., 143, referring to 20 Op., 80, 82; Kealoha *v.* Castle, 210 U. S., 149, 154).

The practical construction given by the parties in interest to the Manhattan statute was the same which had been given to the former statute. Three years elapsed before the city made any grant at all. Then, on May 8, 1833, it did "grant and demise" to the Manhattan company "the privilege and right to lay or place underground pipes in any and all of the streets, avenues and public places of the City of New York" north of the north line of the grant of 1823, "to have, hold, use and enjoy the said right and privilege" until May 12, 1853, the day on which the New York company's grant was to expire (p. 5089).

On May 5, 1848, the Manhattan company obtained from the city an extension of its franchise until May 5, 1868; and as a condition of this time extension it submitted to a limitation as to space, accepting 42nd Street as its future northerly line (pp. 427-8).

The stockholders of the company reincorporated themselves for a period of fifty years under the Act of April 20, 1867 (p. 4834), but obtained no further franchise grant.

The Metropolitan Gas Light Company.

This company was incorporated by the statute of April 17, 1855, with the following power (pp. 4852-3):

> "with full power and authority at any time hereafter to manufacture, make and sell gas, to be made of coal, oil, tar, peat, pitch and turpentine or other materials, and to be used for the purpose of lighting the city of New York, and the streets, avenues, lanes, alleys and squares thereof, and any building, manufactories or houses therein contained and situate, and to lay pipes for the purpose of conducting the gas in any of the streets, avenues, lanes, alleys and squares of the said city, and to adopt any other necessary means to furnish gas to any inhabitant of said city."

This statute expressed explicitly the power of the city to limit the use of the franchise (p. 4853):

> "and that no public street, avenue, lane, alley, square or highway in the said city shall be dug into or defaced or other means adopted in regard thereto for the purpose aforesaid, without the permission of the two boards of the Common Council of said city first had and obtained, and the said boards are hereby authorized to grant and vest exclusive permission and authority to and in said company for said purposes to such extent and under such regulations as to them shall seem expedient, and such permission

and authority shall be conclusive, *and shall continue as thus fixed during the period designated by said boards at the time of granting the same.*"

The grant by the city of a franchise "to lay pipes" was made over the Mayor's veto on December 22, 1858. It expressed no space limitation, but a time limitation of thirty years. It referred to the New York and Manhattan grants, and was clearly intended to carry similar and equal privileges (p. 5094). Yet this is the franchise which Mr. Zollikoffer, President of the company, referred to as expiring in 1889 (p. 93, *supra*).

The Harlem Gas Light Company.

This company was incorporated under the Gas Light Corporations Act (p. 309, *infra*), on February 7, 1855, its term of existence being fifty years (p. 4857). Its grant from the city was approved by the Mayor on April 25, 1855. It was restricted to that portion of the city lying north of the centre line of 79th Street, and contained no time limitation. It contained a reservation of the right of the city to purchase at any time from the company all its personal and real property upon payment of the cost of the same *plus* 10% (pp. 5092-4)

The value of the franchise, while it existed, could at any time have been reduced by the legislature to an amount not exceeding 10% of the cost of the real and personal property of the company, by authorizing the city to purchase as required in the contract, if such authorization were followed by a purchase thereunder.

But it is unnecessary to consider this, because the Harlem grant expired on February 1, 1905, having been made to a company whose term of existence was fixed at the time of the charter as expiring on that day.

There is no presumption of perpetuity in the grant of a franchise, and when a grant is made to a corporation incorporated for a limited term of years it is presumed that the franchise was intended to last for that term of years. This principle has just been enforced in a very important case by this court (Blair *v.* City of Chicago, 201 U. S., 400, 481, 488; S. C. below as Govin *v.* City of Chicago, 132 Fed. Rep., 848, 855; and see cas. cit. at 161 Fed. Rep., 771; S. P. State *ex rel.* Walker *v.* Payne, 129 Mo., 468).

The principle upon which these decisions proceed, and which is a mere application of the general rule that franchises are construed most strongly in favor of the public and as against the grantee, is best explained in Coosaw Mining Co. *v.* South Carolina, 144 U. S., 550, 561-2.

There is a remark by Parker, C. J., in the Ghee case, 158 N. Y., 510, 513, to the effect that a gas franchise granted under the Transportation Corporations Act is perpetual. This remark was unnecessary to the decision of the question before him. The case was decided against the gas company. The authority from which he cites expressly reserves the question, saying that such franchises are for a long term of years, for the life of a corporation, or in perpetuity (Deehan case, 153 N. Y., 528, 533). The argument which the Chief Judge was making would have been equally satisfied by assuming the franchise to be for fifty years. The question, moreover, is not the same under the Transportation Corporations

Act as under the statutes existing in 1871. Gas corporations are now permitted to extend their corporate existence, and also to transfer their franchises. Hence the presumption that the Legislature intended the franchise to be limited to the fifty year term of the life of the corporation grantee is not nearly so strong, if it exists at all. For present purposes it is sufficient to say that the Court of Appeals will not be embarrassed by this remark, as the court itself said in the Colonial City Traction Case, 154 N. Y., 493, 495:

> "If, as sometimes happens, broader statements were made by way of argument or otherwise than were essential to the decision of the questions presented, they are the dicta of the writer of the opinion and not the decision of the court. A judicial opinion, like evidence, is only binding so far as it is relevant, and when it wanders from the point at issue it no longer has force as an official utterance. The failure to read the opinions of courts with this fact in mind gives rise to much fruitless litigation."

We quote again from the Matter of Attorney-General, 124 App. Div., 401, 407:

> "It was competent for the local authorities to give a general consent covering a fixed period of time, *or running during the life of the corporation.*"

The complainant has relied mainly upon remarks of the Chief Judge in the Broadway Railroad case, People *v.* O'Brien, 111 N. Y., at page 38. Those remarks related to street railroad franchises, and are subject to five comments. First, the history of these railroad franchises in

the city is quite different from that of gas companies. Gas franchises were always until a comparatively late period, restricted to comparatively short terms. Street railroad franchises on the contrary had been considered perpetual, as shown by the cases cited in the Broadway case. Second, the argument of the court in the Broadway case, at pp. 41-2, was largely based upon legislation peculiar to railroad corporations and which in 1871 and for nearly twenty years thereafter was not applicable to gas companies. Gas companies had no power to transfer franchises or (until 1884) to consolidate with other companies, or to lease, as I shall show a little further on. Third, that portion of the discussion which related to the question of perpetuity was not concurred in by the majority of the court. Two judges did not sit, while two judges concurred upon grounds separately stated by them. Fourth, the discussion as to perpetuity was entirely unnecessary to the decision of the case. It was sufficient for the purposes of the case to hold as the concurring judges said, that the property and franchises "survived" the annulment of the corporation. It made no difference to the result whether the franchises were granted in perpetuity or for a long term of years. The Court of Appeals does not feel bound by expressions used under such circumstances (Colonial City Traction case, *supra*). Fifth, the cases cited by the chief judge as authorities for the statement that the estate was in perpetuity are themselves *obiter dicta*.

The recent Miner case, 123 N. Y., at pp. 249-51, which very hesitatingly lays down that the franchise of a steam railroad is perpetual, is of course based upon entirely distinct grounds. An ordi-

nary steam railroad (as distinguished from a street railroad) is a structure permanent in itself and requiring acquisition of the fee of real property by eminent domain. It will therefore be perceived that there are reasons for inferring a legislative intent that a steam railroad franchise should be perpetual which do not exist in the case of an ordinary street franchise, especially a franchise for the maintenance of mains and pipes, which, as all users of the public streets know to their sorrow, are continually being taken up and replaced.

Some confusion in mind seems to exist as to the effect of an extension of the life of a corporation to which such a franchise has been granted. It is of course true that the legislature, as in the Detroit case, 184 U. S., 368, 395, may grant to a corporation a franchise which will by its terms outlive it; and in such a grant it is necessarily implied that the franchise may be assigned to a successor, or may be enjoyed by the grantee for the full term if its life be thereafter extended. This does not affect the construction of the original grant. The limitation of the grant to fifty years for instance, in a corporation whose life is limited at that time to fifty years, is a rule of construction of a written instrument. It is presumed that the legislature considered the corporation as a being whose existence was to terminate upon a certain date, and intended to do no more than to give it a franchise which also would expire upon that date. It is not presumed, unless the contrary be in some way expressed, that the grant is for the fifty years plus such further period as may be covered by any extension of life

that may be obtained in the future under a general or special statute not yet enacted.

The Knickerbocker Gas Light Company.

This company was incorporated under the General Law on June 24, 1876. It claimed two franchises. One of these—the Anthracite franchise—was for the whole city, but to expire September 17, 1913. The other—the State Grant of 1871—was perpetual, but confined to the territory north of 79th Street.

The Anthracite Franchise.—Nothing had ever been done under this. The company to which it was granted never did any business (p. 6205). It was bought up by the Union, on whose collapse the Knickerbocker was organized, but the business was confined to the territory north of 79th Street, claimed under the State Grant (p. 6099).

The local authorities on September 17, 1863, over the Mayor's veto, had granted a fifty-year franchise for all the streets in the city of New York to a corporation by the name of the Anthracite Gas Lighting and Heating Company. On May 26, 1865, this franchise was amended by making it run to the assigns of that company (pp. 5095-7). The franchise was sold on the following day to another corporation which had been organized under the name of the Citizens' Mutual Gas Company of New York (p. 5101). This corporation again, on November 22, 1871, assigned the franchise to another corporation which had then just been formed under the name of the Union Gas Light Company of the City of New York (p. 5104). Charles E. Appleby was subsequently ap

pointed receiver of this last named company in an action brought by the people of the State of New York (pp. 5105-7) and upon his petition he was directed to sell "all the right, title and interest" which it or he "may have" in this franchise (pp. 5108-9). Under this sale the franchise if any passed to the Knickerbocker Gas Light Company (pp. 5110-14).

The fatal objection to this Anthracite franchise was that it was not granted to a gas light company but to a manufacturing company. The certificate of incorporation is set forth in the record (p. 5097), and expressly states the statute under which the company was organized.

There was no general authority to the Common Council of the City of New York to grant gas franchises, nor did the Manufacturing Corporations Act of 1848 (which was Chapter 40 of the laws of that year) contain any such authority. The right of the local authorities to grant franchises to gas companies is contained in the Gas Light Corporations Act of 1848, which was passed before the Manufacturing Corporations Act (being Chapter 37 of the Laws of that year) and was contained in section 18 thereof, as follows:

> "Any corporation *formed under this act* shall have full power [etc.] to lay conductors [etc.] with the consent of the municipal authorities of such city, village or town, and under such reasonable regulations as they may prescribe."

The Manufacturing Corporations Act did not contemplate the incorporation of public service corporations, although corporations for the purpose of *manufacturing* gas could properly have been incorporated under it.

The Anthracite charter is just one of those numerous charters obtained in order to be hawked around, which were until recent years so common, and to such a large number of which the state courts have given their quietus. The fact that the company was organized under the wrong act shows that it was not a serious enough project even to have been submitted to competent legal advice.

It may be added that the Citizens Mutual Gas Company, to whom the first assignment was made, was also incompetent for the same reason, having been incorporated under the Manufacturing Corporations Act (p. 5098).

The next claimant by way of assignment, the Union Gas Light Company, was organized under the right act; but no action was ever taken by the state or municipality to recognize the Union Company as owner of any such franchise, or in any other way to validate the claim. So far as appears, no such action was ever asked.

The State Grant of 1871.—This is the franchise granted by the statute of June 12, 1871, chapter 944, entitled "An Act to authorize the construction of gas works, and the manufacture and sale of gas for the purpose of lighting a portion of the City of New York, and the streets, avenues, squares and buildings therein, and to lay pipes for that purpose." This statute provided that Isaac P. Martin and others, and their assigns, were authorized and empowered to manufacture, make and sell gas for the purpose of lighting that portion of the then city lying north of the centre line of 79th Street, with power

to lay pipes in the streets, etc. It provided that "the rights and privileges hereby granted are exclusive." It contained no power to incorporate, but provided that the persons named should select an executive committee of not less than seven, nor more than thirteen members "who shall have the control and management of the business authorized to be done and carried on by the provisions of this act" (pp. 5119-21).

The true inwardness of this statute was speedily disclosed by a series of assignments whereby whatever rights there might be thereunder passed to William M. Tweed, Richard B. Connolly, Thomas C. Fields, A. Oakey Hall, Peter B. Sweeney, Henry W. Genet and certain gentlemen associated with them (pp. 5123 *et seq.*). A long series of further assignments vested the property in its present owners, who are not the complainant or any of its predecessors, but certain gentlemen named at pages 5244-52.

An executive committee was appointed, and the chain of title contains a curious series of assignments whereby the members of this committee from time to time "do hereby release, relinquish, assign and set over" to the persons mentioned "all the rights, powers and control which we have acquired or can in any way exercise or have as such executive committee." The chain of title does not show who were the original executive committeemen elected, or whether they were properly and validly elected, although it contains a call for a meeting for that purpose (p. 5122). There is an affidavit annexed to this notice, signed by one William Foster, Jr., stating that he was for a long time chairman of the executive committee, and that certain persons at one time elected mem-

bers of it were ineligible; but this was an affidavit made many years afterwards, and its competency does not appear (pp. 5122-3). A few months after this original meeting occurs the first release, relinquishment and assignment, signed by certain persons claiming to be members of the original executive committee, including Messrs. Genet, Connolly, Fields, Sweeney and Hall. Although the membership of this committee is prescribed by the statute to be from seven to thirteen, Genet and his fellow claimants to that office undertook to "release, relinquish, assign and set over" to Cornelius S. Bushnell, Henry J. Davison and Gordon H. Waddell "and their assigns, all the rights, power and control which we have acquired, or can in any way exercise, or have, as such executive committee" (pp. 5199-5200)! On December 5, 1876, an entirely new set of claimants to the position of executive committeemen appear, namely, Charles E. Appleby, William Foster, Jr., James M. Townsend, Eben F. Bacon and Samuel J. Young; and these release, relinquish, &c., to seven other persons mentioned (p. 5225). The Union Gas Light Company consents to this assignment (pp. 5225-6). Five of these seven, on May 20, 1878, release, relinquish, etc., to William Bayard Cutting, Robert F. Cutting, M. Bayard Brown, O. P. C. Billings and William W. Moir (p. 5234). These five assignees, together with the other two members of the original executive committee, on March 11, 1880, release, relinquish, etc., to O. Ottendorfer, H. E. Gawtry, Henry Day, Philip Allen, Charles G. Francklyn, Peter Gardner, L. C. Thompson and their assigns (p. 5254). There is no provision in the statute for the assign-

ment of their powers or duties by the executive committeemen.

On February 25, 1874, William Foster, Jr., and six others, by an indenture reciting that they "now constitute the executive committee for the control and management of the business authorized to be done and carried on by the provisions of said act" (although there is no evidence that any one of them was ever elected to that position), grant and assign to the Union Gas Light Company, for and during the whole term of its corporate existence (namely, until October 26, 1921), "the right to do, exercise and perform as the agents and attorneys of the parties of the first part and their successors, hereby irrevocably constituted all and every the rights, privileges, franchises and immunities given and granted or created" by the statute of 1871; and covenanting to hold these, together with any franchise that they may thereafter get, and on request of the corporation or its successors to elect a new member in place of any member of the committee who may die or resign, etc.; and that upon request of the corporation to "grant and delegate to any other corporation or association the right as the agents and attorneys *of such executive committee* to manufacture, make and sell gas," etc., with covenant for further assurance (pp. 5212-14).

Its interest having been sold by its Receiver (pp. 5108-14), the Union Gas Light Company requested certain persons stated to be the executive committee to grant and delegate all their rights and privileges to the Knickerbocker Gas Light Company (pp. 5225-6). Thereupon, and on the same day, a new agreement

was made between the pretended executive committeemen of that date and the Knickerbocker Gas Light Company, similar to the former agreement with the Union Gas Light Company (pp. 5229-32).

The complainant has failed to prove title in the executive committeemen who made these extraordinary contracts. It is always incumbent upon a party claiming a franchise to prove that he has got it; and a franchise emanating from Tweed and his associates is a particularly fit object for the application of this rule.

Furthermore, this very sweeping franchise was to be exercised by individuals appointed in a certain way, and without power to choose their own successors. It may have been the object of the legislature to have the franchise, if accepted, managed by men who would be personally individually responsible. However this may be, the duties devolved upon the executive committee could not be delegated by them to a corporation (Phelps *v.* Mayor, 112 N. Y., 216; People *v.* Brooklyn Cooperage Co., 187 N. Y., 142; People *ex rel.* Comatus *v.* Willis, 9 App. Div., 214; Providence Retreat *v.* City of Buffalo, 29 App. Div., 160, 165; Day *v.* Green, 4 Cush., 433; *In re* Jetter, 78 N. Y., 601; Matter of Presbytery of N. Y., 9 Daly, 116; aff'd no op. 80 N. Y., 642).

The case is equivalent to the leasing of a railroad without the consent of the State (in New York the State consents in that particular case), which is an illegal delegation.

Thomas *v.* Railroad Co., 101 U. S., 71, 83.

APPENDIX B.

Market Values of Gas Stocks, 1883-4.

These figures are taken from the *Commercial and Financial Chronicle* of the dates named.

The Knickerbocker securities were held by the Municipal and their value is therefore reflected in the value of the stock of that company. The amount of Harlem stock outstanding is given by the *Chronicle* as $1,850,000, although Mr. Yalden gives it at only $1,800,000. Assuming the higher figure as more favorable to the company, we have the following tabulation showing the amounts of stocks outstanding:

Harlem Co.	1,850,000
Manhattan Co.	4,000,000
Metropolitan Co.	2,500,000
New York Co.	4,000,000
Municipal Co.	3,000,000

The following tabulation gives the bid and asked prices of the various companies at the dates mentioned, and the total valuation of the stocks of the various companies outstanding, at the dates named respectively:

	July 7, 1883		Aug. 4, 1883		Sept. 1, 1883	
	bid	asked	bid	asked	bid	asked
Harlem Co.	102	105	104		104	
Manhattan Co.	230	235	228	231	225	230
Metropolitan Co.	187	189	188	192	185	190
New York Co.	122	124	125	130	125	130
Municipal Co.	180	182	182	185	182	185
Total valuation	$26,042,000		$26,204,000		$26,009,000	

	Oct. 6, 1883		Nov. 3, 1883		Dec. 1, 1883	
	bid	asked	bid	asked	bid	asked
Harlem Co.	110	115	110	115	110	115
Manhattan Co.....	225	230	229	231	235	240
Metropolitan Co.	188	190	188	190	190	200
New York Co.....	128	130	128	130	134	136
Municipal Co.....	189	190	189	190	190	192
Total valuation	$26,525,000		$26,685,000		$27,245,000	

	Jan. 5, 1884		Feb. 9, 1884		Mch. 1, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	115	118	117	120	120	125
Manhattan Co.	230	265	274	277	270	273
Metropolitan Co.	205	215	225		235	240
New York Co.....	145	148	154	160	154	157
Municipal Co.	195	197	210	215	210	215
Total valuation.....	$29,302,500		$31,209,500		$31,365,000	

	Apr. 5, 1884		May 3, 1884		June 7, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	120	122	120	122	115	120
Manhattan Co.	265	267	275	280	280	285
Metropolitan Co.....	222	225	230	235	227	232
New York Co.....	150	151	154	156	150	154
Municipal Co.	206	210	213	215	207	210
Total valuation.....	$30,550,000		$31,520,000		$31,212,500	

	July 5, 1884		Aug. 2, 1884		Sept. 6, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	120	122	120	122	121	123
Manhattan Co.	285	290	300	305	295	300
Metropolitan Co.....	234	237	234	237	230	235
New York Co.....	152	154	160	163	159	161
Municipal Co.	202	207	205	210	204	207
Total valuation.....	$31,610,000		$32,620,000		$32,268,500	

	Sept. 13, 1884		Sept. 20, 1884		Sept. 27, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	121	123	122	124	124	126
Manhattan Co.	297	301	297	301	302	305
Metropolitan Co.	233	237	230	233	234	240
New York Co.....	158	161	160	163	162	165
Municipal Co.	206	209	206	210	215	220
Total valuation.....	$32,443,500		$32,467,000		$32,154,000	

	Oct. 4, 1884*		Oct. 11, 1884		Oct. 18, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	131	135	125	133	125	133
Manhattan Co.	315	325	305	310	305	310
Metropolitan Co.	240		240	250	240	250
New York Co.	163	167	165	167	165	167
Municipal Co.	230	240	230	235	225	231
Total valuation	$34,443,500		$34,012,500		$33,862,500	

	Oct. 25, 1884		Nov. 1, 1884		Nov. 8, 1884	
	bid	asked	bid	asked	bid	asked
Harlem Co.	130	135	115	125	120	125
Manhattan Co.	298	301	285	287	280	285
Metropolitan Co.	240	250	215	230	215	225
New York Co.	167	171	150	155	150	155
Municipal Co.	220	227	205	215	210	215
Total valuation	$33,605,000		$31,052,500		$31,095,000	

	Nov. 15, 1884		Nov. 22, 1884	
	bid	asked	bid	asked
Harlem Co.	115	125	115	120
Manhattan Co.	275	285	265	270
Metropolitan Co.	225	232	230	235
New York Co.	150	155	155	158
Municipal Co.	205	210	205	210
Total valuation	$30,902,500		$30,827,500	

*Consolidation Agreement made Sept. 29 (p. 4819).

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 396.

WM. R. WILLCOX ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK.

REPLY BRIEF FOR APPELLANTS.

EDWARD B. WHITNEY,
GEORGE S. COLEMAN,
Of Counsel for Appellants.

ERRATUM.—The $1,303,000 reserved for working capital was originally a fictitious item, but was contributed to the treasury and sold as treasury stock, bringing its full value besides a part of the premium which has been allowed in our calculations. Hence the calculation of dividends up to March 15, 1900, at page 28 of our main brief, should be made upon the basis of $29,994,000 + $1,303,000, which would reduce the average dividend rate to a trifle under 7 per cent., and the average rate of net earnings to a trifle under 8 per cent. A corresponding correction should be made at page 150*c*.

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The appellee refers to our brief of 317 pages as "voluminous," apparently with reference to the common notion that the party with the longest brief has the laboring oar. We do not dispute the correctness of the notion, but notice that the appellee feels obliged to file 423 pages, which, if it had supplied the court with as good print and liberal margin, would have been 504. As, however, so much reading matter is being imposed upon the court by all of us, we shall make this reply as terse as possible.

The page references are to the record, except those headed "App. Br.," which are to the main brief filed by us on behalf of the Public Service Commission.

We take up first Mr. Mathewson's brief on the facts, second Mr. Beck's general brief, and third Mr. Garver's brief on special franchises and good will.

Mr. Mathewson's Brief.

It would too much expand this brief to make all necessary corrections as to statements of alleged fact. We have made a very careful and we think accurate statement in our own main brief, while upon some matters we shall comment when we come to discuss Mr. Garver's, but make the following specific corrections here:

(Page 3, top:) It might be inferred from this statement that Mr. Rowland appraised all the tangible property. He appraised only manufacturing plants, and not all even of them. His appraisals were not on the basis of what they were intrinsically worth. The appraisals by others were not made in a manner deserving very serious consideration (pp. 6078, 6083-5; App. Br., pp. 20-1). The plants have been so largely changed since then that Rowland's own estimates are for present purposes practically valueless.

(Pages 15-17:) This is a discussion of Yalden's estimate of $20,942,632.85 as the cost of the tangible property turned over to complainant by the constituent companies in 1884. We have not based any calculations on this figure, as it seemed to us that all points presented by the assignments of error could be brought out by much simpler calculations.

The discussion is summed up in a tabulation claiming to show an original cost of $29,106,098.56 in addition to certain items unknown; a tabulation introduced as part of the testimony of complainant's secretary, Carter (p. 4490). To begin with, we object to the use by complainant of any evidence by that gentleman which is not supported by other testimony, unless complainant concedes the correctness of his most deliberate sworn statements, statements accompanied by an oath to his own expertness, concerning the valuation of the plants, mains, services and special franchises, and the course of value of the latter items since 1900 (App. Br.,

pp. 59-60, 76, 81-3). The Master seems to think that his oaths should be condoned, in view of the fact that he was making them on behalf of a large corporation which was interested in having him swear as he did (p. 216); but surely if his former testimony is to be disregarded when it is no longer self-serving, his present self-serving testimony must go with it.

In order to make up this tabulation, he twists a phrase out of Yalden's testimony at page 6394, concerning certain appreciation written up by the New York Gas Light Company—an operation which Yalden had just previously described as "a sort of raising the wind out of nothing." The appreciation written up by that company during its whole career of sixty years was $500,000 more than all the depreciation written off (p. 5657); and Yalden's testimony, quoted by Carter and again in the brief, does not refer to the writing up in 1884, but to a previous writing up in 1871 (p. 6394; compare pp. 5657, 5660).

In the same tabulation the Manhattan company is credited with an additional value of $2,030,000 as having been charged off on a plant that was still as good as new; the impression intended to be conveyed being that the plant then was worth $2,030,000 more than its book value. Yalden's testimony at pages 6315 and 6338 is referred to as authority for this. At the former page it will be found that he simply testifies that the Manhattan company wrote off $2,030,000 as against a plant costing $2,400,000, as illustrating that in less than ten years a plant costs its value over again (a proposition now denied by complainant). At page 6338 he testifies that a large depreciation item had been charged twice over by the Manhattan company, but that on discovering the error it was corrected; and that items scheduled by the complainant at $9,611,000 cannot have cost more than $4,873,000 in round figures. Carter seems to have put down this item of $2,030,000, which really represented repairs and replacements, as part of the original cost

of the property, thus duplicating the value of the existing plant to that extent.

The two page references given for the paragraph about the Municipal company are entirely misleading. The first is a quotation from Carter, not Yalden. The second refers to the New York company, not the Municipal. The testimony referred to at page 20 of our main brief shows that the Municipal company was claimed in 1884 to have obtained an unduly high appraisal.

We can find no basis for Carter's statement that the Harlem company had practically doubled its plant capacity out of operating expense. Mr. Moss, who is referred to, only says (upon hearsay) that prior to his own time the lots east of First Avenue were filled in up to the bulkheads out of expense account.

(Page 18:) The paragraph as to mains and services is inaccurate. Two of defendant's experts are referred to as testifying that "pipe actually cost during *the* period in which a large part of the systems were laid, cost as high as $76 a ton." Marks' testimony is simply "that products of iron, such as pipe," were even higher than $50 or $60 a ton "in the 70's." Edgerton says that he does not know the price in New York city, but that he "paid $72 to $76 a ton for pipe in the 70's"; but that he was surprised to find "that the pipe laid was very little *less* than it is now"; that pipe at $76 is more expensive than pipe at $28.90, but that "I saw the actual figures of the cost of laying the Mutual pipes, and it differed very little from what it is today"; that the period of laying this pipe was from 1870 to 1872 (p. 2992). The sole ground for the statement in the brief is therefore that pipe at some other point than New York went as high as $76 a ton at some time during the 70's, according to the recollection upon cross-examination of an expert whose main testimony complainant discredits. As against this we have the contemporary testimony of Rowland that when the ap-

praisals were made in 1884 the cost of manufacturing a plant was no greater than twenty years ago (p. 6084); that the cost of iron (in respect to mains) "is not as low as it was thirty years ago"; that the iron of the Manhattan system would cost more than fifteen or twenty years earlier to lay; and that "the cost of laying the mains now I think would be much larger than it was fifteen years ago" (p. 6095). The correctness of Edgerton's recollection as to the date when the cost of laying the pipes of the New York Mutual Company was less than the 1906 figures, when he testified, is shown by Yalden's report. It appears that the bulk of these pipes were laid about the year 1871 (pp. 5608, 5722). It is a familiar fact that prices went down after the panic of 1873. The period referred to by Marks and Edgerton must have been a very brief one, probably just before the panic. There is no proof that "a large part of the systems were laid" at this epoch, nor anything so indicating. The mains and services laid by the Manhattan company during 1872 and 1873 were only a trifle over $25,000 in cost (p. 5633). Those of the New York company do not separately appear, but would probably, in view of the geographical location of that company, be even less in proportion. The Municipal company did not begin construction until after the panic (p. 5690). The Knickerbocker had only in part constructed its works at that time (p. 6087), and there is no indication that it had as yet put in any mains and services. The Harlem company invested about $66,000 in mains and services in 1872 and 1873 (p. 5710), and the Metropolitan company invested about $142,000 therein in those years (p. 5684). The total appraised valuation of mains and services at the time of consolidation having been about $6,225,000 (p. 5730), it will be perceived what a very trifling figure can have been cut by these temporary high prices, and why they were disregarded by Rowland in his contemporary testimony.

At the foot of page 18 there is another quotation from Carter, and similar quotations appear from time to time

witnesses if they be honest, no matter how incompetent or uninformed they may be demonstrated to be." If they are demonstrated to be incompetent or uninformed, they cannot be believed by a fair-minded commission, and that is the test. Counsel deems it proper to make a statement outside the record as to what occurred at the trial, which perhaps makes it proper for us to say that complainant's counsel before the Master submitted a series of propositions claimed to establish the alleged ignorance of the defendant's experts, and which as stated gave that appearance, and which we believe to have caused the Master to make the statements quoted on page 33, but which are not repeated here, although we had made statements which challenged their repetition (App. Br., pp. 54-7).

(Page 42:) Let us see whether appellants overlooked anything as to appellee's two coal gas plants. Complainant's witness testifies that an up-to-date plant would be worth $71.50 more per M. of daily rated capacity. The rated capacity of the two plants is 9,500,000 per day, or 1,900,000,000 per year. If the saving in cost at the up-to-date plant were five cents per M. (see p. 642 and App. Br., p. 109), it would be $95,000 per year, and would save six per cent. on an additional construction of $1,583,333. The additional cost of an up-to-date plant would be only $679,250 (9,500 × $71.50). And the new plant could be built on cheap land, releasing very valuable land, which could then be sold (App. Br., p. 109).

(Page 51:) This repeats from page 18 the unfounded statement upon which we have already commented with relation to the original cost of the mains.

(Pages 56-8:) The market value of complainant's stock has fluctuated in the most violent manner. It is immaterial upon a question like this, although we have discussed the market values of the stocks of the old companies for the

purpose of showing that the capitalization of the present company was not based upon them. The finding at the bottom of page 56 was claimed by the complainant and held by the Master to be immaterial, and we agree with them. The price of complainant's stock represented the probability of its being allowed to overcharge for gas, *plus* the supposed future value of its outside investments. The comparison with conditions in other cities was introduced into this case by one of the other defendants, and in our opinion raises collateral issues which have not been fully tried out in this case, were incompetent, and would probably, if competent, help the defendants more than the complainant, as so many cities supply gas at 80 cents or less.

(Pages 59-64:) Complainant's discussion of its tax reports fairly states Mr. Carter's excuses for having sworn to them, and a portion of the Master's remarks thereon, but all of the latter should be read, for they show the Master's point of view, which was an obstacle that defendants were unable to overcome. Counsel seems to think that the complainant and its secretary acted justifiably, and that no fair-minded State board could have discredited the explanations and credited the reports. We have already expressed our views of Mr. Carter, and we cannot agree with counsel as to the amount of honesty which should be required from corporations and their officers and attorneys. A corporation which is guilty of such reports should, under the tests laid down by this court, be remitted to the tribunals of the State for any remedy. The State legislature is entitled, in our opinion, to a higher degree of respect than such a corporation.

(Page 65, foot:) The city's witness Marks is represented as stating that Simpson's figure of $12,636,150 "is a 'moderate and fair' estimate of present value" of mains. The language used by him at that point was "moderate and fair, but unnecessary," and was qualified by stating that Simp-

son's figures were assumed to be correct (p. 2786). After making the affidavit from which this statement was taken, the witness came to the conclusion "that an allowance should be made for excessive capital investment in mains" on account of "a duplication and triplication of mains in the streets" (p. 1961); thus pointing out the fallacy in complainant's figures if cost of duplication is the test. He afterwards testified that the cost of laying the mains under cobble pavement would appear to be $7,141,231.51.

Complainant then proceeds to state that the estimate of the State's witness Edgerton amounted to a still larger sum "when supplemented by items of cost omitted by him." The reference is not to any testimony of Edgerton, but to a tabulation made by complainant's own superintendent of mains, Simpson, of whom the best that can be said is that he stands a little better than Carter as a witness. Testifying twice within a few months, he succeeded in raising his own valuation nearly $1,000,000 (App. Br., p. 77). Edgerton's estimate was $8,919,792.55 (pp. 2983-4). The rest of Simpson's figure represented what he claimed to be Edgerton's errors and omissions (p. 2926).

(Page 67:) Here begins a series of attempts to offset errors of the court below by claims that it had erred in rulings against the complainant upon other points. Complainant's right to this form of defense will be more conveniently discussed in connection with page 68 of Mr. Beck's brief.

(Page 69:) A tabulation is here given, alleged to be a bill of particulars of the parcels of land which were allowed by the Master, but disallowed by the court. If the complainant had desired to go into this question upon the appeal, it should have seen that a bill of particulars was in some manner incorporated in the final decree. We can find no warrant for such a tabulation in the record. The theory of the court below was that if it had made any mistake as to any of these

lots, the mistake was offset by the inclusion in capitalization of certain parcels as to which "very serious doubts are entertained" and "particularly the so-called 111th Street plant;" and that taking the real estate as a whole the corrected figures "represent all that complainant can justly ask" (p. 423). Following our general plan of not raising questions in this court which did not involve a very considerable item of capitalization, we accepted the compromise thus forced on us, and filed no assignment of error to the inclusion of the 111th Street manufacturing plant and the real estate on which it stands, although that plant is not in use and does not appear to have been in use since 1884. This portion of complainant's brief calls upon the court to examine a large number of trivial items, without sufficient information to figure out the allowance made by the Master for any one of them. As we do not understand the question to be properly before the court, we do not go into its details, which would require a brief of considerable bulk.

(Page 75:) In view of the remarks just made, it is unnecessary to discuss the alleged concessions by the city's witnesses. It is our contention that such concessions should not be treated as of much value, as they form parts of calculations the result of which would be fatal to complainant (App. Br., p. 11); which seem to us to be frequently based on insufficient information or insufficient consideration, although not generally approaching the corresponding calculations of complainant's witnesses in these respects.

(Page 77:) In its discussion of the item of Working Capital, complainant concedes that the court below was unfamiliar with the record. This we agree to as a general proposition, but this particular matter was fully argued. He allowed more working capital in proportion to the total book value of the property than was allowed by complainant itself at the time of its organization, and it was computed upon the

book value, not upon the sales of gas (App. Br., p. 94). This should be the best evidence, as expressing deliberate judgment of persons familiar with the business. The amount needed for working capital is very small, because complainant can force prompt payments from its customers by threat of shutting off their gas. Hence the bad and doubtful debts amount to a trifling figure, as pointed out by the court at page 396. As against these figures, claims of complainant's witnesses and claims of its counsel as to the effect of his cross-examination of the city's experts were properly disregarded by the court. Dr. Humphreys' estimate involves the persistent fallacy that expenses vary per M. (see App. Br., pp. 122-123). A vastly greater amount of gas may be driven through the mains for delivery to consumers who have got to pay up every month, without much increase in the requirements for working capital.

(Pages 81-4:) Complainant claims that all stock held by it in companies engaged in the manufacture of gas which it uses, or in the carting of supplies which it purchases or sells, must be regarded as part of its capital engaged in the gas business; and characteristically rests itself, as to this legal proposition, in part upon supposed admissions of the city's non-legal experts. Its claim that such a concession was made by counsel is not sustained by its references to the record.

The amount involved in the National Coal & Coke Company item was comparatively trifling, and had not attracted the attention of counsel in drawing the original exceptions to the Master's report, but the omission was promptly supplied when the present appellants came into the case (pp. 382, 386). The error in this respect was pointed out to the court, citing Noyes on Intercorporate Relations, § 299; 2 Cook on Corporations, § 709, and auth. cit., and 1 Morawetz on Private Corporations, §§ 232, 233; to which we may add Peterson *v.* Chicago, etc., Railway Co., 205 U. S., 364.

391. It is now common for one person to hold all of the stock of a corporation, but it would be a new doctrine to make him responsible for its debts. When one corporation acquires control of another, the two continue to exist as before, and are legally distinct. Complainant may manufacture its own gas or buy from another company. Complainant may cart its own coal, or pay another company to do the carting. In either case, the expense appears among operating expenses. It may afterwards invest in the stock of that other company; but if it does so, the stock simply stands as an investment. The item of operating expense is unchanged. The only change in the situation is that the expense item must be more carefully looked into by the public, in order to see that an overcharge is not being made for the purpose of reducing the apparent amount of complainant's net profits

To the Astoria investment—the stock held in the Astoria Light, Heat & Power Company—is applicable the foregoing discussion of the National Coal & Coke Company investment. We have already discussed at length the facts concerning the purchased gas and the Astoria investment (App. Br., pp. 97-112).

Suppose that complainant sells its stock in the Astoria company and invests the money in other speculations; that it then realizes on part of those speculations and buys back half the Astoria stock; that it then realizes on the rest of those speculations and buys back the rest of the stock; that our fellow-defendant, the Attorney General, then sues it as a monopoly, and it divides the stock among its stockholders *pro rata;* that when the storm blows over it buys the stock back, except part which has been sold to others in the market. At each of these steps is the price of gas to fluctuate?

(Page 86:) We do not simply seek "to throw doubt" on the Master's statement as to complainant's maximum daily output, but have shown that it is contrary to most conclusive evidence. Complainant endeavors to avoid the natural inference from its failure to produce its daily station records, by

saying that it was not asked to produce them. It was for complainant to produce them voluntarily, if it regarded the matter as important. They would undoubtedly, in connection with the record of gas purchased, show with substantial accuracy the amount of daily sales. The average daily sales for the heaviest months being but little over 45,000,000 cubic feet, and the maximum variation between two different days being 6,000,000 cubic feet, the statement that the maximum daily sales are 70,000,000 feet is clearly absurd, and a maximum of even 50,000,000 is altogether improbable. The Master was plainly misled on reading over the record, and the court was misled by the Master.

(Page 87:) The tabulation at this page is based upon some statements of complainant's chief engineer Bradley, who has frequently had to qualify his testimony, although he stands much higher as a witness than Carter or Simpson. He is responsible for the capacity ratings of the various plants which have been accepted in the case, and we have shown that the plants can actually for a considerable period be worked far above their rated capacity (App. Br., p. 103*n*). The capacity rating evidently allows for a very considerable reserve; indeed, for all or most of the twenty per cent. reserve claimed by Bradley. In the case pointed out by us, the reserve was over the twenty per cent.

(Pages 88-9:) This argument is based on the fundamental error as to the maximum daily requirement.

(Page 90:) The argument that legislative acts "necessarily look to the future" is disposed of by the obvious proposition that so long as they do not violate constitutional rights as to present conditions, they cannot be enjoined on expert testimony as to what may be expected to happen at some future time (App. Br., pp. 198-9).

(Page 91:) Here begins an attempt to justify the Master's capitalization of the "Astoria" item, which was stricken out by the court. We pressed below, as we are pressing here, the argument that the record is defective in not showing the actual facts regarding the other companies doing business in this complainant's territory (App. Br., pp. 273-80); and to this extent the action of the court in effect sustains the argument. It will be perceived that complainant's contention calls upon the court to speculate about facts of which it was in its power to supply full information, such as the probable value of the land and plants of the other companies, their holder capacity, reserve capacity, etc.

(Page 95:) Here again complainant picks one item out of a computation by one of the opposing witnesses, although the acceptance of his computations in general would be fatal to itself; and in this instance although it concedes his figures to be upon an erroneous basis. He was not a State's witness, and is not claimed or conceded by the State to be an expert. The matter is not particularly important, because the whole argument is without legal basis. We have shown that the purchase of this gas was mutually beneficial to the purchasing and selling companies (App. Br., pp. 100-104); and as above pointed out, the fact that complainant has within a few years past bought control of the stocks of these companies cannot affect the situation.

(Page 96:) Complainant persists in its statement that the calendar year 1905 was selected with the concurrence of all parties, and its insistence that the defendants were allowed full privilege of looking into other periods and putting the results in evidence. Comment is made on the fact that we were not present at the trial; but we have examined the record and made some inquiry for an explanation of it; and our former source of information is the sole source that can be availed of by the court. The page references for the statements which we make are to be found at pages 10, 26 and

270 of our main brief. Under this heading, as often elsewhere, complainant insists on referring to the city's witnesses as witnesses for the "appellants"; and here it goes outside of the record to quote from documents not in evidence. A good deal of the information finally opened up to the defendants was opened up at a comparatively late period of the hearing; and at the same time they were under pressure from what seems to us a very extraordinary action of Judge Lacombe in accompanying a preliminary injunction with provisions that imposed conditions upon the persons against whom the injunction was granted; conditions which the Master himself substantially admitted to be inconsistent with a thorough investigation (p. 1047).

(Page 105*a*:) Objection to the court's computation of the amount of income from purchased gas seems to be admitted to be an objection in form only. It therefore does not need consideration. The concession as to candle power makes it unnecessary to consider the facts stated by us (App. Br., pp. 130-4).

(Pages 106-8:) The argument at this point has been answered by us (App. Br., pp. 100-12, 198-9, 231-3).

(Page 108:) The special franchise tax matter has been discussed by us (App. Br., pp. 233-8), and will be further discussed in connection with Mr. Garver's brief.

(Pages 109-16:) This is a series of speculations based upon the theory that there will be an increase of sales of over 1,000,000,000 cubic feet during the year commencing May 1, 1906. We have shown that this period is not one which it is proper to speculate about (App. Br., pp. 198-9), and that it is probable that there will be a decrease rather than an increase of sales (*Id.*, pp. 110-11). The course of speculation about this mythical item is characteristic of the brief. It begins with repeating a comparison between the average

sales per meter in 1885 and those in 1905; a comparison upon whose basis certain words were put into the mouth of the expert witness Forstall before the Master (pp. 4331-2). The figures were entirely misleading, because the falling off had been caused by some cause which ceased to operate in 1898, and from that time there had been a very rapid rise in consumption per meter, terminating in a period of comparatively slight decline (pp. 5040-41). Most of the latter decline was from the nominal year to the calendar year 1905. The items of distribution and general expense cannot be compared from Exhibits 93 and 94, because the accounting system was changed, and because the item of "Expense—General Office" was very largely increased, evidently because it is stuffed with items improper in this case, as we have pointed out (App. Br., pp. 138-9). It is noticeable, however, that while the amount of meters considerably increased, and while the total consumption of gas diminished, the item of "Repairs to Meters" remained substantially at a standstill. The items of "Expense" and "Distribution," which include part of the work on the meters together with the bookkeeping and collecting charges (pp. 5778-80), decreased considerably. The increase of meters does not mean corresponding increase of services, in a borough whose additional population lives in tenement and apartment houses. The book value of complainant's services declined substantially from 1903 to 1905 (State's Exhibits Q.-S., p. 5230). Many expenses must be very much reduced per M. by such a situation; as, for instance, repairs to mains. The testimony of complainant's own books cannot be neutralized by expert testimony as to experience in London or St. Louis. Under this heading again, complainant undertakes to build up an argument on figures derived from the report of the Stevens Investigating Committee. It did not introduce these figures in evidence, and we do not understand that a report which was not put in evidence can be referred to for such a purpose. We have referred only to its final recommendations, as being

judicially noticeable in corroboration of what otherwise would be presumably the legislative intent of the pressure provision (App. Br., pp. 281-2). There is nothing to indicate that the items upon which complainant's computations at pages 112-13 are based, are made up of the same particulars in 1901 as in 1905. For instance, the latter figure includes the large item of repairs to city lamps, which is plainly improper (p. 428), and was very likely omitted by the committee. We have pointed out that the item of general office expenses has been in all probability stuffed with expenses belonging to Astoria. The conclusion finally drawn by complainant's calculator from this tabulation is that there is a great increase of proportionate expense when there is a great increase in sales; but the very table which he quotes from the Stevens report shows just the contrary. It shows that the great increase in sales from 1901 to 1904 was accompanied by a very substantial diminution in proportionate distribution and general expenses (p. 73). Complainant's calculator then proceeds to figure out that there would have to be an increase of investment in distributing system and apparatus of $1,670,358 in order to handle this mythical additional output, which he estimates at 1,136,298,000 feet. The increase from 1903 to 1905 was about 517,000,000 feet (p. 5041). The valuation of the mains remained almost stationary. That of the services substantially decreased. That of the meter cocks and connections decreased. That of the entire "plant, property, and construction," deducting the "real estate," manufacturing plant, franchises and rights, increased during the two years only about $335,000 (State's Exhibits Q-S, p. 5260). Tabulations prepared by complainant's expert and referred to at the foot of page 115 of its brief are conclusions from facts not stated, and which, if stated, would be incompetent (App. Br., pp. 17-18, and cases cited at p. 53). We do not think that the private consumers or their statutory protectors should be held responsible for the city's assignments of error (App.

Br., p. 158); but the quotation from one of those assignments at page 116 is misleading. The inadequacy there complained of was in the matter of protection against improper pressure.

(Page 116:) We are somewhat surprised at complainant's attempting to base a calculation on a statement of ours in our "Brief below." Our statement was that the mains and services increased in value only $137,004.43 from 1904 to 1905, referring to Carter's sworn statements in the tax reports, to be found at pages 5057, 5068. The balance of the $200,000 was a guess at the probable increase in meters. The source of this calculation was stated, so that complainant's counsel when he read this brief knew precisely the source of the figures which he quotes from us. We, like the State officials who had preceded us, had put some reliance on the statement of Secretary Carter. State's Exhibits R and S, however (p. 5260), show the precise figures. They show that the mains and services greatly decreased, and that the total increase in mains, services, and meters was according to complainant's own balance sheets, but about $100,000 during that year. The figures on the balance sheets are for December 31, and those on the tax reports are for June 30; but this does not greatly affect the calculation. The figures quoted from our brief below were part of a calculation which we did not think worth making here, in view of other facts which we had ascertained from the record, and which make the whole topic academic; but it seems to us that in dealing with an opponent's brief a higher degree of ingenuousness should be observed than is observed in complainant's treatment of the testimony and exhibits in the record.

(Pages 116-17:) The propriety of the item of interest on taxes was conceded by the court below (p. 401), but not by us. It would have been perfectly feasible for the complain-

ant to pay its taxes and assure their recovery in case they were held excessive. It was not because of lack of protection that their payment was withheld. Furthermore, it was the almost unanimous opinion of the bar, justified by the unanimous decision of this court, that the appeal here was dilatory and unfounded, and that there was no propriety whatever in charging any direct or incidental expense thereof to the consumers. Furthermore, the decision of this court was made May 29, 1905 (199 U. S., 53), before the sample year was half over. There has been no propriety in contesting the subsequent assessments, because, as we have already pointed out (App. Br., p. 239*n*), and shall set out more particularly in connection with Mr. Garver's brief, all the special franchise taxes up to and including that of 1905 have been grossly underassessed.

The above remarks apply also to the item of franchise tax litigation expense.

As to the third item, of legislative investigation expense, there had been no previous legislative investigation for twenty years, and there has been none since. To refer to the expenses of the present suit begs the question. If the present suit ought not to have been commenced, its expenses would not be properly charged as against the consumer.

Complainant's counter-claim as to taxes and wages has been answered by us (App. Br., pp. 134-9).

(Page 119:) This point of complainant's is based on the unsustainable assumption that the first unit of Astoria must be treated by the State as affording a substitute for the purchased gas. This we have fully discussed (App. Br., pp. 100-12, 231-3).

(Page 122:) This is an appeal to the judgment of an engineer, whom the complainant has insisted all through the trial to be an incompetent person, upon a question not of engineering but of law. He was not hired by the State, and

the State has always taken the same view of his qualifications as the complainant. His testimony shows that he had not the faintest conception as to the legal effect of a holding of stock by one company in another company. Hence he fell into the blunder of giving an allowance for the so-called "Astoria" item. The allowance which he gave was $5,097,389.56 (p. 1940). This is a trifle more than what in effect the court itself has given, namely, an allowance of income which is equivalent to a capitalization of $3,333,333, *plus* another item just short of $1,000,000 (App. Br., pp. 232-3). We venture to disagree with complainant and the court as to the propriety of the former figure, even when corroborated by the legal opinion of Mr. Marks. Mr. Marks is here (as he and Prof. Bemis at so many places are elsewhere) referred to as "appellants'" witness. We cannot call attention to the impropriety of this designation at every place where it occurs, but we trust that the court will bear it in mind. They were retained solely by the city, which is not jointly interested with the State, has no power or duty to protect the individual consumer, is not interested in the same statute, and could probably not have been joined as a defendant in this suit, had any of the defendants taken objection thereto (App. Br., p. 3). The city hired its own experts, and conducted its case in its own way, frequently disagreeing with the counsel for the State as to what ought to be done (as for instance see page 807). Its expert witnesses were permitted to submit tabulations of figures whose preparation required considerable knowledge of law, and which the counsel for the State thought involved mistakes of law that were favorable to the complainant; which were protested against in the court below, and which have been protested against here (App. Br., p. 11). To the city these concessions of its experts are of comparatively small importance, because the city can not only accept Judge Hough's figures but concede a large part of the Master's additional figures and still win its own case (*Id.*, pp. 183-4). We welcome the very valuable assistance of the counsel for the city upon this appeal, but ob-

ject to all attempts to identify us with the vague errors of its experts upon the trial.

These remarks are of course applicable to the opening sentence of complainant's next point, at page 123.

(Page 124, top:) The statement as to the purchased gas is incorrect. The amount paid for this gas was as follows (pp. 5777-8):

Cost of labor and materials	$854,459.57
10% thereon	85,445.96
	939,905.53
Less gas sold	1,014.68
	938,890.85
Interest on capital invested in procuring said purchased gas	58,149.04
	$997,039.89

In this as in various other places, the Master and court fell into a plain error; and through an erroneous calculation came to overlook the fact that interest was actually being paid by complainant on capital invested in the manufacture of the purchased gas.

(Page 125:) It is rather absurd for complainant to submit such calculations as this, when it has not submitted all of the facts relating to the capitalization, income, expense, and physical condition of the other companies. One of our grounds of objection to the decree is that this information should have been given us (App. Br., p. 273); and we have pointed out that the transaction is doubtless a profitable one to those companies (*Id.*, p. 104). When a corporation is already earning enough in its own natural territory to pay expenses and give a reasonable profit on fixed capital, it is very common for it to sell gas at a much reduced rate in other territories. This is because its fixed charges are already pro-

vided for, so that they may be disregarded, and the profit computed upon operating expenses alone. It is for this reason, as well as on account of the operation of the tariff laws, that so many of our manufacturers sell their surplus output abroad at a lower rate than at home. This is doubtless the case with these subcompanies, which are so anxious for a business that pays a profit of ten per cent. over operating expenses, when it requires no additional fixed capital on their part; while on the other hand a return of five per cent. is required by them on all such capital necessitated.

Complainant's argument at page 129 has no basis in the record. It nowhere appears that the subcompanies (except the New Amsterdam) were worked up to the limit of their previous capacity, even when they supplied all their respective shares of this purchased gas. The fact that the New Amsterdam company is paid interest on the new construction which the "agency agreement" renders necessary—paid by the complainant and the amount charged up against its consumers—is conclusive to the contrary.

It is very evident that complainant is trying to get out of its own consumers a profit on its investment in the stocks of the other companies; while when the similar suits of those companies come on to be tried, it will see that they get credit for their whole capitalization and are not debited with any more income than they actually earn out of this purchased gas. The same capitalization will thus be charged twice, once against the consumers of the complainant and once against the consumers of the other companies.

The foregoing discussion covers everything in the brief under consideration up to page 135.

(Page 136:) The ten cent. item involves only matters of fact, and not of law. Complainant's argument is as usual based on statements of experts, which in turn are based on insufficient or incorrect information. We have stated the facts, which are much more simple than they seem (App.

Br., pp. 113-26). Instead of underestimating the depreciation, the court has overestimated it (*Id.*, pp. 250-2).

(Page 139, foot:) These alleged additional items—candle power, taxes, labor cost—we have fully considered (*Id.*, pp. 130-9). The last of the three items relates to an increase of wages, which may have occurred after May 1, 1906 If so, it could not be considered in support of this injunction (*Id.*, pp. 198-9).

(Pages 141-3:) A collection of alleged admissions on the part of the defendants is here furnished to the court. The first of these admissions is in the introduction of State's Exhibit L; but State's Exhibit L confutes complainant's claims (App. Br., pp. 122-3, 250-1). The next admission is in obtaining from the Master a finding that complainant expended an average of 10.89 cents per M. of gas sold during the twenty years preceding 1905. This is a fact, but it does not carry the conclusion of law which complainant desires. We hardly need discuss the quotation from the Attorney commission (p. 14). The State's answer denies that the New York State Gas Commission is a quotation from complainant's own complaint. That complaint annexes an exhibit which it alleges to be an opinion or statement of the commission (p. 14). The State's answer denies that th paper "was rendered by the said commission in connection with its said order," and avers that it "is a statement made to the public press merely" (p. 50). It is not, however, inconsistent with anything in our argument, since we concede that a slight increase was necessary to bring the expenditures for repairs and replacements up to the average of the previous twenty years (App. Br., p. 251). Here again complainant attempts to charge the State with the vagaries of the city's witness, Prof. Bemis. We have already shown how he was misled by using in this case ideas derived from testimony in other parts of the country, without sufficient exam-

ination of the experience of the complainant itself (*Id.*, p. 121). In what way a report of a "Chicago Committee" of undefined origin and character is an admission binding our clients, we are unable to guess (p. 144). Here again complainant concedes that the court below was unable to grasp clearly the facts of the case, on account of the limited time at its disposal and the size of the record. This agrees with our own views, that the time which is actually allowed by a Federal judge for the discussion before him of a record made up before a Master is totally inadequate to the proper handling of such a case, especially in view of the rule in Blease *v.* Garlington. In our opinion at least treble the time allowed by the judge was necessary to the proper hearing of this case; although the time (a little over four days) which he did allow might have been sufficient had the Master been able, as a State commission or a State court would have been able, to keep incompetent and irrelevant testimony out of the record.

(Pages 146-7:) Having stated that its sales of gas through its mains had reached "the enormous amount of about one hundred and sixty-four billion cubic feet," complainant criticises us for not accepting the test of average cents per M as "the most safe and accurate guide" as to repairs and renewals. Yet it presents testimony to the effect that these same mains are as good as new, and will not depreciate in a century, and obtains a decree for a sum very much larger than the original cost of the mains, based upon that proposition (App. Br., p. 78). It is stated somewhere in the case that the repairs to mains in the small city of Holyoke, where most of them are laid in soft earth and not covered with pavement, are higher per M than in the city of New York. The tabulation on page 251 of our main brief shows how the proportion of repairs and replacements has been reduced, notwithstanding the fact that during the later period the distributing portion of the plant has been used for purchased as well

as home-made gas. It is interesting to see how complainant, when struggling for the life of its favored fallacy, for the first time concedes that there are "practical witnesses on both sides of this case." We believe that this is the first instance of such a concession. Defendants on the hearing before the Master felt obliged to meet complainant with counter-testimony upon its own theory of proof, although the State at least disputed the correctness of the theory. The Master followed complainant's line of argument on this, as on almost every other point, but the judge recognized the fallacy and endeavored to keep clear of it by using "as the basis for computation, not the cost per thousand of gas, but the cost per annum of complainant's whole gas business" (p. 428); consequently miscalculating (if our reasoning is correct) only to the amount stated at page 251 of our main brief.

(Pages 148-9:) It is not shown that the agreement to open the new account with the ten-cent item, or the vice-president's testimony in Boston, was prior to the introduction of the resolution under which the Stevens committee was appointed, or that its first discussion was prior to the time in 1903 when the city stopped payment on all its gas bills upon the claim that they were too high (see Brooklyn Union Gas Co. *v.* City of New York, 188 N. Y., 334).

(Pages 149-50:) The court will find our computation to be correct. It is all taken from complainant's own figures. It shows the amount of new capital brought in from the outside since 1884, and the amount of that new capital which was expended in other enterprises. The balance is not over the sum mentioned, $3,929,371.82 (App. Br., pp. 22-3). The basis for our statement that the sum shown by complainant's Exhibit 79 increased the manufacturing output to the extent named is to be found in the cross-examination of defendant's chief engineer by Mr. Page at pages 1714-16 of the record and in complainant's Exhibit 85, page 5039. The

words "more than" in our brief, at the place quoted, should read "nearly." The sales of 1884 were probably on the basis of something less than 3,900,000,000, while those of 1905 were 13,283,164,000 (p. 5039).

(Pages 152-3:) The testimony does not show, as stated, that the other companies "do business wholly in the more congested part of the Island of Manhattan." It does state that the complainant has to maintain candle power in the "most remote districts of the city:" but this is a use of the word "city" in the old sense of the term. Complainant is practically confined to the Island of Manhattan. If the facts as to the other companies had been put in evidence, as we contend that they should have been, any special factors in the situation would doubtless have been brought out.

(Pages 153, 154:) We respectfully protest against Dr. Humphreys and Mr. Carter being described as "the witnesses of both appellee and appellants." On the contrary, we have already protested against the acceptance of any statement of Mr. Carter unless otherwise corroborated; and this would be peculiarly applicable to estimates of station cost of gas of other companies, made in rebuttal without opportunity of surrebuttal.

(Page 157:) This point of complainant's brief is entirely in line with our own argument (p. 17). We therefore do not discuss it, although we do not understand that all of its statements of fact would have stood if the collateral issues had been fully tried out. But for Blease *v.* Garlington we would probably have been spared this large section of the record.

(Page 162:) The question of pressure we shall discuss in connection with Mr. Beck's brief.

(Page 176:) This is an attack by complainant's counsel upon the Stevens Investigating Committee of 1905, extracted from an affidavit sworn to by Secretary Carter.

It may cause surprise that an *ex parte* statement of this kind should get into evidence at all.

This is one of a set of extracts from affidavits which came into the record in a very singular way, over the objection and exception of the counsel for the State, and by a ruling which as against them seems to us to be grotesque (pp. 807-8, 952-3, 957, 1669, 1670, 1676-8).

These *ex parte* reflections on the Stevens committee were so entirely irrelevant to any question in the case that the defendants seem to have left them, as complainant here states in italics, "uncontradicted."

In speaking of the Senate Committee Report of 1886, it omits to state that the committee consisted of three members, of whom the chairman most vigorously dissented.

The affidavit states that the investigation by that committee was one "lasting nearly a year." The committee convened on October 15 (p. 6071). The last hearing was on December 30 (p. 6514). The minority and majority reports are dated on February 26 following (pp. 5382, 5388).

In stating the completeness of the investigation, it fails to note the fact that one of the most important witnesses left the State before his examination was completed, and stayed away until the committee adjourned (p. 6516).

As to the Stevens investigation, the fact that the companies had no "right" to participate by counsel is mentioned. It is admitted that the "courtesy" of the committee permitted "brief addition of questioning or data" and (while evidently endeavoring to give the contrary impression) carefully refrains from stating whether or not the courtesy was so exercised as to permit the necessary facts to be brought out. Had the affidavit been more frankly and less cautiously drawn, it might have appeared that extensive cross-examinations were permitted on the part of the counsel to whose

brief we are replying. The force of the statement that the company was not permitted to address the committee at the conclusion of the investigation is somewhat broken by the fact that the Master subsequently declined to hear oral argument of this case until after he had filed his report. The witness was incompetent to state whether the committee had "time or opportunity to consider written memoranda submitted, prior to preparation of its report to the legislature." We have just commented on the fact that complainant claims the court below to have had insufficient familiarity with the present record; and we believe that we have shown remarkable unfamiliarity with certain portions of it, on the part both of the Master and of the court.

It seems to us that it would be extraordinarily improper to give any weight to the general statements of Mr. Carter as to evidence before the committee. It would seem sufficient that he reproaches the committee with believing his own statements under oath; statements which we have quoted at some length at pages 59-63 of our main brief. The fact is that the Stevens committee as to nearly all of the facts reported relied upon the admissions of the complainant's officers and employees; admissions which under the advice of counsel they afterwards disavowed, but which fully justified the recommendations of the committee as to the reasonableness of a seventy-five cent rate for gas, and which are supported by the actual facts as we understand them, and as we have stated them to this court.

(Page 177:) This sets forth another part of the same Carter affidavit, containing reflections on the Gas Commission.

It is not charged that the commission took insufficient time to consider the case, which is admitted to have been pending before it for about three months and a half (p. 5). It is not claimed that either party before the commission was forced to proceed without sufficient preparation or to

rest before the testimony was all in; or that there was any such extraordinary pressure upon counsel as characterized that period of the present suit when the record was being made up.

The first paragraph quoted from the Carter affidavit charges the commission with excluding certain items, part of which were excluded by Judge Hough, and most of the rest of which we believe this court will exclude.

The second paragraph states the newspaper criticisms upon the commission for not more promptly reporting in favor of 80 cent gas; criticisms of a nature not infrequent with relation to courts as well as other tribunals (except so far as they are restrained by fear of punishment for contempt of court) and which in themselves show that the commission insisted upon proper deliberation before it acted. It then goes on to set forth the efforts made to obtain the passage of an 80 cent bill by the legislature, based on the Stevens committee report, without waiting for the conclusion of the proceedings before the commission. It ends by stating that a bill was introduced in the legislature by Senator Stevens to abolish the commission. There is nothing in this paragraph that would afford a ground for inference that the commission, who as Carter admits were deliberating when outsiders were pressing for immediate action, were affected by outside pressure in coming to their decision; and the fact that they fixed the rate at eighty cents instead of seventy-five cents as had been recommended by the Stevens committee, together with the admissions that had been made by the complainant and the facts that had been brought out in this record, give such ample justification for the decision to which they finally came, that the reflections which counsel makes under cover of the Carter affidavit seem to us to be grossly improper; and the Master should not have stretched or reversed the rules of evidence to admit such a paper into the record of this case. Had Carter been asked by his own counsel the questions commencing at the foot of page 178 of

Mr. Mathewson's brief, they would doubtless have been objected to by the State.

The act of 1906 establishing the 80 cent rate was passed because of the threats of the gas companies to attack the constitutionality of the act establishing the Gas Commission, as unlawfully delegating legislative power. After two investigations, and with this doubt existing, it was thought that there was enough evidence to justify the reduction to 80 cents, and that all technical obstacles should be removed by act of the legislature.

(Page 179:) The Stevens report, that complainant's "gas making plant, including whatever franchises it may own, does not exceed the sum of $30,000,000" (p. 80), is accompanied by the figures upon which it is based; and these figures are those which were sworn to by Mr. Carter himself, in the affidavit and oral testimony set forth in full upon our brief (p. 78; App. Br., pp. 59-63, 76). This showed a total value of the tangible properties at $27,298,576.50. The reasons stated for giving but a small value if any to the franchises are set forth at pages 78-80. We respectfully submit that this report (which was reputedly drawn by a lawyer of the highest standing at the bar of New York) shows better consideration of the subject than those of the Master or of the court below upon the same question, and are fully supported by the facts and law as set forth in our main brief.

The final climax at the foot of this page is a reference to the special franchise tax assessment. We should hardly regard this claim of relationship between the so-called special franchise tax and the franchise valuation for rate-making purposes as worthy of notice, if it had not been endorsed by Judge Lacombe and Judge Hough. We have dealt with it in the main brief, and shall consider it again in replying to the brief of Mr. Garver.

Mr. Beck's Brief.

I. Jurisdiction.

(Page 21:) We are not aware of any such practice as moving to dismiss a bill for want of jurisdiction, because there is an adequate remedy at law. There is no record, so far as we are aware, of the oral argument before Judge Lacombe, and we do not know what questions were selected to be pressed on that occasion; but whether or not the preliminary injunction had been granted, we presume that the complainant would have persisted, and the defendants would have had "to take their chances before a Master." It is difficult to guess how Mr. Beck thinks that the adequacy of remedy at law could have been disputed until after the Master's report.

(Pages 27-8:) Cleveland *v.* Cleveland Railway Co., 194 U. S., 517, 531, states cogent reasons for the exercise of jurisdiction by a court of equity, when it has jurisdiction; but the decision is expressly based upon, and states the case to be within, Detroit *v.* Detroit Railway Co., 184 U. S., 368, 381. The same considerations are fully set forth there, and are held as sufficient reason for exercising equitable jurisdiction when the defense that there is an adequate remedy at law was not seasonably taken; Mr. Justice Peckham saying that "we do not feel compelled, under the peculiar circumstances of the case, to ourselves take notice of it." The peculiar circumstances of these street railroad cases are that if the question cannot be tried out in court, the passengers will be refusing to pay the fare demanded, upon penalty of being ejected and keeping the car service in continual turmoil and confusion, with "probably frequent breaches of the peace" (184 U. S., 379). The relations between a gas company and its consumers are very different. There has been no confusion and no breach of the peace incident to the considerable

litigation which has arisen in the State courts of New York, owing to the fact that this complainant saw fit not to join as defendants any representatives of the consumers, and that consequently Judge Lacombe did not enjoin the consumers from suing the company to protect their gas meters. Had Judge Lacombe not interposed with this suit, the question would have been immediately tried under the State procedure, although this complainant might have been a defendant.

(Page 29:) While the Public Service Commission Act provides for mandamus, it but transfers to the commission a function which previously belonged to the Attorney General. The remedy already existed (People *v.* N. Y. C. & H. R. R. Co., 28 Hun., 543). We have made no concession to the contrary.

(Page 30:) Section 962 of the New York Code of Civil Procedure has always been practically construed as directory, and we do not believe that any court in any State or country would construe such a clause as mandatory without much more positive language to that effect. No public prosecuting officer in any State, so far as we are aware, is obliged to sue for all penalties recoverable, when such action would be unreasonable. "Must" is very frequently interpreted as "may." Various New York cases to this effect are quoted at 28 Cyc., 780.

II. The Eleventh Amendment.

This point was not waived, but properly taken by answer (Illinois Central R. R. Co. *v.* Adams, 180 U. S., 28, 38-9). The Eleventh Amendment is not in term applicable to a suit against a State by one of its own citizens, but has always been held applicable by analogy, as in Hans *v.* Louisiana, 134 U. S., 1, 10. In view of the decision in *Ex parte* Young,

209 U. S., 123, we did not raise the point in our assignments of error, although a judgment for costs is granted against Mr. Jackson *as* Attorney General. This seems to concede that the suit is one against the State. It cannot be intended as a judgment against him personally, since the main costs were incurred during the administration of his predecessor in office. It must be therefore intended as a judgment against the State as such, and not upon the theory of the Young case. If it is a judgment against the State, the suit is a suit against the State. However, we have waived the point so far as we are concerned, while the Attorney General has raised it only by an assignment of error as to the judgment for costs.

III. Pressure.

(Page 35:) Complainant calls attention to the fact that the act of 1906 took effect within a month after its passage, thus probably allowing insufficient time for the alterations necessary in complainant's distributing system. The answer to this suggestion is that the provision as to pressure was copied from a statute of the previous year. Complainant had had a year within which to conform itself to the requirements of this law, and it does not appear that this was not sufficient time. On this page complainant quotes the language of one of its own requests to find, which was found by the Master (p. 255). Singularly enough, it selects for quotation a passage referring to the Edgerton proposition, upon which we stated in our brief that the State had never relied; its reliance is upon the system of district governors discussed in the cross-examination of Mr. Bradley by Mr. Page (App. Br., p. 150). This cross-examination is to be found at pages 565-576 of the record. The Master's discussion of the subject is to be found at pages 248-250, of which only seven words are quoted by Mr. Beck. The Master refers to Mr. Bradley's admission that it was practicable to put district governors at different points; that they were used in many

cities; and that theoretically it was practicable to use them here; but that he had doubts of their reliability; and the Master summed up in the paragraph quoted by us at page 283 of our main brief. Mr. Bradley does not pretend to claim that the expense of the district governor system is prohibitory. He states that "in my opinion district governors do add to the dangers of interruption and difficulty with gas supply;" and, while admitting their use in other cities, says: "Perhaps where they have more nerve than I have."

The provision as to pressure is the provision in this gas legislation which was not based upon admissions by the complainant, but upon testimony of outside experts, like Professor Hallock (pp. 2846, 2863). It is the only point as to which it seems to us that there can be very serious question as to whether the legislation is wise; but the question, as Mr. Bradley admits, is one where experts differ, and where the practice of different cities differs. Does the Fourteenth Amendment require the court to review the legislative decision as to whether the engineers whose advice has been followed by the legislature have too much "nerve"? The case seems to us quite analogous to that of the Federal safety appliance laws. "It is scarcely necessary to say that courts do not sit in judgment on the wisdom of legislative or constitutional enactments. This is a general principle; but it is especially true of Federal courts when they are asked to interpose in a controversy between a State and its citizens" (Louisville & Nashville R. R. Co. *v.* Kentucky, 183 U. S., 503, 512).

(Page 43:) We are somewhat surprised to learn the names of the decisions upon which we "rely principally" (see App. Br., p. 282).

(Pages 46-7:) Mr. Beck's argument at this point assumes that the decree of the court below is correct in every particular apart from the question of pressure, that the district

governors would involve an expense of many millions of dollars, and that Mr. Bradley is in error in admitting, and the Master in error in reporting, that their use is physically a possibility. If these assumptions be made, we concede the result which Mr. Beck reaches.

IV. Penalties.

(Page 48:) The order appointing the Master did not, as we construe it, authorize him to make any findings about this branch of the case. This is a question of law, and his business was with the facts. He so construed it (p. 152), and said nothing about the penalties in his draft report. Subsequently complainant submitted a request that he find that the penalties "so far as the evidence shows are unexampled in extent and severity." There having been no issue about it, there had been no evidence about it, unless something bearing on the point may have been slipped in, in connection with some other subject. The draft report had given no notice to the defendants that such a point would be raised. The request, and the granting of the request, seem to us to have been improprieties. In the first sentence of this point, Mr. Beck seems to endeavor to give the impression that the penalty question was discussed before the Master, and that no attempt was made to defend the statute in the court below. The briefs and stenographic minutes of the discussions below are not in the present record; but in view of this statement of the brief we may be permitted to say that the penalty provisions were defended in the court below with entire seriousness, and to the extent which the very limited time allowed for discussion permitted. That discussion is the basis of pages 165-175 of our main brief.

V. Discrimination.

(Pages 52-4:) Since so much stress is laid upon the Lake Shore case, 173 U. S., 684, we desire to say a few words more about that case. It was supposed by many, when first de-

cided, to lay down a very drastic rule in favor of uniformity of rates. It is now settled that any reasonable classification may be adopted. The Lake Shore case was one of a very peculiar and ill-constructed statute, whose provisions seem to have been so severe that they were regarded by the majority of the judges in this court as capable of unconstitutionally reducing the net income of the appellant company. This court has since stated, in explanation of the case, that "there was no reasonable ground upon which the legislation could be rested, unless the simple decision of the legislature should be held to constitute such reason" (Wisconsin, etc., R. R. *v.* Jacobson, 179 U. S., 287, 302).

Our interpretation of this case seems to us to be necessary, since otherwise it would be difficult to explain how the railroad could be heard to complain of a discrimination by which it was not the sufferer. The later cases cited by us show that it cannot complain of special classifications, if on the whole it is permitted to earn a rate of return that protects its constitutional rights. Yet the point that the railroad itself was not discriminated against, and that the persons discriminated against did not complain, was not discussed by the court, or apparently even by counsel. It seems to be well-settled that a person will not be heard in court to argue that a statute is unconstitutional, unless his own constitutional rights were violated. The doctrine dates from as far back as Sinclair *v.* Jackson, 8 Cowen, 543, and is sustained by the cases cited in Brown *v.* Ohio Valley Railway Co., 79 Fed. Rep., 176, 178, and in 8 Cyc., 791.

There is a reason for this, which is at once obvious when suggested. It is well settled in this court, in those of the State of New York, and everywhere else, so far as we are aware, that a constitutional right of this kind can be waived (Pierce *v.* Somerset Railway, 171 U. S., 641, 648; People *ex rel.* McLaughlin *v.* Police Commissioners, 174 N. Y., 450, 456, and cases cited; cases cited in 8 Cyc., 791-3). Hence nobody can appeal to it who could not waive it.

The discrimination between the city as a whole and its inhabitants as individuals has existed ever since 1897. It is less since 1906 than at any time during that whole period (App. Br., p. 182). It is not claimed that any single individual has complained. Nobody before Mr. Beck has had the ingenuity to discover the discrimination in favor of proprietors of hotels who do not use gas at all.

(Page 57:) The Wilson case, which held that a railroad could not be forced to carry a policeman free of charge, did not turn upon any discrimination in favor of the public, but upon the ground that a railroad company could not be forced to carry any person without recompense.

VI. The Technical Points.

(Page 62:) Counsel seems to misunderstand the passage which he quotes from our main brief. The misunderstanding would have been avoided if we had said "every other question *of fact* was evidential," etc. There are questions of law as well as of fact in the case, and this is an appeal, not a writ of error; wherefore all questions of fact are before this court, although we have submitted only certain questions, for the reasons stated at pages 159-161 of our main brief.

(Page 66:) None of the questions which we have assigned for error are "infinitely complicated," or as complicated as many which reach this court upon appeal. The complicated questions are imported by the appellee, although, anticipating the probability of some such action on the appellee's part, we devoted a part of the statement of facts in our brief thereto. Most of the facts which we state as bearing upon our own assignments of error are undisputed.

(Pages 67-9:) As to our alleged admissions, it would seem sufficient to refer the court to the pages cited by complainant from our main brief.

(Page 70:) Apparently complainant has been misled as to the Blackfeather case, to which the Attorney General intended to refer, by a mistake in the page reference. We understand the reference to be to United States *v.* Blackfeather, 155 U. S., 180, 186. Certain of the points urged by the appellee in that case seem to bear the same relation to the record as the points urged by the appellee in the present case. The complainant here also omits to notice Landram *v.* Jordan, 203 U. S., 62, referred to in the brief of the city of New York. In that case it would appear that the appellee was not only attacking a portion of the decree which was unfavorable to himself, but also was trying to sustain the decree so far as favorable by an argument as to which he had been overruled below. We have been unable to find any authority directly in point, as to whether under the practice of this court an appellee can sustain the decree below by specifying errors in matters altogether unconnected with those brought to the attention of the court by the appellants, requiring this court to open portions of the record that are not referred to by the appellants, and requiring it to make findings of its own upon matters not passed upon or matters adversely disposed of by the court below. If any such practice were permitted, it certainly seems as if there should be a rule requiring the appellee to assign errors. In this case, with so voluminous a record, the appellee has specified errors in a brief which did not reach the appellants until the day after the case had actually been called for argument, and it is only by a happy chance that the unusual length of the cases ahead of it has allowed several days' time for examination of the points thus raised. Certainly an affirmance under such circumstances would not be consonant with equity, even if the points were well taken. It seems to us that the only thing that the court could equitably do if (while sustaining the appellants' assignment of errors) it took jurisdiction of appellee's contentions, and considered that they were sustained to the extent of offsetting the errors on

the other side, would be to remand the case for further proceedings.

In the present case, if our appeal is to be regarded as opening the whole record so that the case is to be heard *de novo*, there are many questions which we could bring up, although (on account of the fact that it would only be by adding a good many small items together, each involving more or less complication, that a large correction could be made either in the capitalization or in the net income as computed by the court below) we did not feel either that it was necessary for us to do so or that we would be justified in troubling this court with the matter. We have not had time since receiving the appellee's briefs to bring these matters before the court, and if the Master and court have (as for the purposes of appellee's argument at this point they must be assumed to have) committed flagrant errors prejudicial to the appellants, their findings on other points should not be assumed to be correct without remitting the case for a further hearing and report.

We are confident, however, that the independent points urged by the appellee will not be found to require serious consideration.

VII. Reviewability of Rates.

(Page 72:) We never made any such contention as is set forth here, and do not understand that there is any question about the correctness of appellee's proposition.

VIII. Rate of Return.

(Pages 76-9:) Mr. Beck uses a picturesque phrase, which he modestly admits having coined himself, to describe the margin that has been pointed out by Justices Gray, Miller, and Brewer (App. Br., pp. 253-4) between the rate which is merely so low that the State authorities ought to permit it to be raised and the rate which is so much lower that its en-

forcement would amount to confiscation. We do not understand whether Mr. Beck affixes to this zone the appellation "twilight" as indicating his own state of mind about it or because one reason for its existence is that the unreasonableness of the rates comprised within the zone is not clear enough to warrant interposition by a Federal court. The distinction seems to us a clear and necessary one, and it has been generally regarded as an established one. Our endeavor has been to obtain a more clear definition of its upper and nether limits.

Mr. Beck's whole treatment of this question seems to us to confuse two essentially different subjects, namely, the taking of property within the meaning of the Fourteenth Amendment and the allowance of a fair compensation with reference to the risks of a particular business. His reasoning is that if the complainant owns certain property, no matter where the property came from or how inequitable to the public the allowance of a return thereon would be, nevertheless the language of the Fourteenth Amendment requires that a full return should be allowed, just as much as in the case of a corporation which has an equity to a full return. He demands a return on the present value of the property, even if the property were a gift from the public,* accompanied by no understanding that any return should be permitted upon it; and he demands a return upon all increments of value, whether earned or unearned, and whether temporary or permanent. The rate of gas must go up and down according as the market for iron pipe varies, although the bulk of the pipe has been underground for a generation.

He finds some color for this position in language heretofore used by this court; language used in cases whose facts did not suggest the possible future appearance of a case like

* The illustration, so harped upon, of a gift from an individual, is no embarrassing. When the gift is from some individual interested in the enterprise, and not from the public, it stands like any other contribution of capital.

this. We have assumed that the language upon which he relies will be construed by this court in the light of the facts of the cases in which the language was used. If not, then the court will feel obliged to give to all the property of complainant, valued according to its present value, such rate of return as shall be non-confiscatory; in other words, as shall prevent the property from being taken (for we are unable to distinguish between "taking" and "confiscation").

But such a result would not be equitable as between the complainant company and the persons whom these appellants are charged with the duty to protect, to wit, the consumers of gas. It would be the result, not of equitable considerations, but of the language used in a certain clause of the constitution. It will be within the power of our clients the Public Service Commission, and it may be their duty, to allow a rate of return which is much higher than that which according to our contention is enough to satisfy the Fourteenth Amendment; but on the other hand they will not be forced to allow more than a non-confiscatory return upon property as to which there is no equity to any returns at all.

Hence, in our motion to advance this cause, we joined with counsel for the city in laying down the proposition that the functions of the Federal and State tribunals were altogether different: that the function of the State tribunal was to allow a fair and liberal rate of return on that as to which the company had an equity to a return, namely, the *capital actually invested;* while the function of the Federal court, according to complainant's interpretation of the previous decisions of this court, is to see that at least the minimum non-confiscatory rate is earned upon the *present value* of all the property employed in the business.

If this position be taken by the court, and the cost of duplication by a plant equally effective be taken as the test of present value, then this court will be obliged to allow the full unearned increment on the mains and services, however in-

equitable that allowance may be as against the consumers; and it will be obliged to allow upon the cost of real estate something more than the original cost of the real estate. But they will not be obliged to allow more than 3½ per cent., whereas the Public Service Commission would never for a moment think of cutting a corporation down to any figure approaching that limit, as to any capital actually invested.

(Page 80:) The Fourteenth Amendment does not contain the provision of the Fifth Amendment that private property shall not be taken for public use "without just compensation." Mr. Beck seems to be under a misapprehension as to this. We do not understand the point to be material, as the "just compensation" provision is not applicable to a rate regulation case.

(Page 87:) We do not remember the remarks of the city's counsel as quoted here from the stenographic minutes. The position of the city at that time somewhat differed from our own as to the rate of return. Mr. Beck can hardly have been much surprised by our position, as it was fully argued before Judge Hough a year ago, and restated both by ourselves and by the counsel for the city in the motion to advance the case, filed in this court at the close of the last term.

IX. Rate of Return.

(Pages 88-90:) Mr. Beck takes what seems to us the singular position that because the New York usury law fixes a maximum rate of return of 6 per cent.—its justification, in Mr. Beck's words, being the "prevention of extortion"—therefore it would be unconstitutional to put the earnings of a public service corporation at a lower figure, while it might be unconstitutional not to permit it to earn more. His reason for the latter proposition is that the corporation adds "to the mere use of money all the resources of science, industry and business sagacity to serve the public interest." But the re-

sources of science are represented by property which forms part of its capital, and the industry and business sagacity are hired and paid for, and charged to the consumer as part of the operating expenses.

Any argument drawn from the usury law is fatal to the complainant. The usury law fixes 6 per cent. as the very highest rate of interest that can be earned from the very riskiest kind of loan. It is admitted by everybody that the complainant's business is about as safe as any business can be; that its risks are risks inherent in all business enterprises. Hence by the reasoning underlying the usury law, a return of 6 per cent. upon the complainant's investment would be unreasonably high.

It seems to us that the court below was right in throwing the usury law out of consideration altogether. Usury laws are disapproved by the great mass of thinking people. The rates are changed only at long intervals. The rate in New York was lowered from 7 per cent. to 6 per cent. in 1879. Did the enactment of the statute of that year change the constitutional rights of public service corporations?

In our opinion it is quite possible that the State authorities will ultimately come to the conclusion that 6 per cent. is the minimum rate of return that should be allowed to a public service corporation under present conditions; that it should be allowed to declare at least 5 per cent. dividends and lay up at least 1 per cent. against contingencies.

On the other hand, it is altogether probable that a much larger return would be regarded as not extortionate in a large class of cases; to this extent disapproving the law which prevents an individual from risking his money in a business enterprise for a greater return than 6 per cent., unless he becomes a partner or stockholder.

Mr. Beck claims his proposition as to the usury law to be sustained by "the highest courts of some of the States." His use of the phrase "some of the States" is analogous to the royal "we"; for it means nothing but his own State of Pennsylvania. The rule laid down in the first Pennsylvania

case which he cites was so unreasonable that it was confirmed in the later case by only a bare majority of the court.*

(Page 92:) The case here cited from the Appellate Division of the Supreme Court of New York is the Jamaica company case referred to at page 238 of our main brief. The referee in assessing the special franchise of the little water company which was appealing, estimated as the profits of the tangible property an amount equal to a 5 per cent. return on its value. This of course left a very large balance of income to be attributed to the intangible franchise. In fact, the computation was made upon the lines adopted by the referee whose opinion is quoted by the Master in his report in this case (p. 204). It seemed to the court, and seems to us, that this made the franchise assessment unduly high. If a 6 per cent. return is reasonable for a little company like the appellant in that case, certainly 5 per cent. is reasonable for this complainant; but for the purposes of the special franchise tax it is altogether probable that a uniform rule will be adopted for the whole State, and that the rate of return will be put at 6 per cent., irrespective of the particular circumstances of the particular company under consideration.

(Pages 93-4:) Mr. Beck's reasoning would not permit a State ever to conform its laws to a fall in the general rate of interest, or to reduce the rates of a corporation which had passed out of the stage of an "infant industry." His position is inconsistent with the ruling of this court in the Stanislaus County case.

In referring to the report of the Senate Committee of 1886, he forgets that the chairman of the committee (which had but three members) was considering a return upon tangible property alone; and that the report was never acted

*Pennsylvania R. R. Co. *v.* Philadelphia County, 220 Pa. St., 100; Mitchell, C. J., Fell, Brown, and Elkin, JJ., concurring; Mestrezat, Potter, and Stewart, JJ., dissenting.

upon. The committee was doubtless affected by the fact that to limit the return to 10 per cent. would be a vast reduction from the rates prevalent up to that time. The New York Mutual company was chartered in 1866, when rates were particularly high. No contract was made by which it should be permitted for all time to earn 10 per cent. dividends, but the limit was put high for the benefit of an "infant industry" from which effective competition was hoped; a hope that was finally destroyed by the purchase of a majority of its stock by this complainant. The 8 per cent. rates assumed by the Stevens committee of 1905 and the Gas Commission of 1906 were assumed in connection with a theory of capitalization from which complainant dissents; nor was this rate assumed to be the lowest reasonable rate, but only to be the lowest rate to which it would be fair, all things considered, to reduce this complainant, in view of the much higher rates which it was then enjoying. We believe that if this case could be submitted to the court upon the report of a Master who did not believe that the burden of proof as to every item was upon the consumers as against the company, even on the present record it would appear that the complainant would be making far above 8 per cent. at the 80-cent rate.

The paragraph quoted from the railroad law merely incorporates in a revision of the statutes a provision adopted in the early period of railroad construction (New York Laws of 1850, Chapter 140, § 33). Its effect has been radically modified by subsequent legislation. At the 80-cent rate this company would earn over 20 per cent. per annum on the capital actually invested.

X. Basis of Calculation.

(Pages 98-9:) Our illustration referred to by Mr. Beck at this point was not drawn from a comparison of one "plant" with another, and assumed that the two companies

compared were equally provident, equally prudent, equally wise, and equally thrifty.

(Pages 99-100:) In considering the next proposition in our main brief, Mr. Beck overlooks the fact that it is unnecessary for the complainant to continue the use of the $10,000 tract which has become worth $1,000,000; that another $10,000 tract would do just as well; that the very reason for complainant's continued use of the tract is that it only cost $10,000, so that complainant can afford to stay there until its plant wears out, without having to carry a heavy capital charge; that nobody would pay $1,000,000 for the land except for the purpose of applying it to entirely different uses, so that if we assumed that the land could only be used for the purposes of a manufacturing establishment, no expert would ever think of valuing it at $1,000,000. Many investors, waiting for a rise, keep cheap buildings on valuable land and collect only enough rents to pay the carrying charges; but no investor other than a public service corporation ever thought of collecting from anybody else an annual income on the probable value of the land, if it should be cleared off and sold at once.

(Page 100:) We fear that we shall never agree with Mr. Beck as to what is "socialistic." His use of the word at this page, as in most other places, seems to us to make it synonymous with "equitable." His proposition here is that a company which is understood by the public to be capitalized at say $10,000,000, and which is permitted by the public (in view of its conducting a valuable infant industry) to pay very high dividends on this capitalization, may "hide away"* further profits which the public does not know that it is making, by paying them out in what the public believes to be operating expenses, but which are really additional construction; the purpose of the whole thing being to pre-

* See Mr. Mathewson's brief at page 16.

vent the public from knowing how much money the company is really making; and then capitalize this additional construction against the public, and collect tolls thereon for the rest of eternity. It seems to us that to permit permanent capitalization of an original fraud, and make it the basis of a monthly charge against every vote in the community, is the very way to spread the spirit of socialism in the community. We believe that it has already had that effect in the city of New York upon a considerable scale; and that no one thing has occurred in that city for a generation past which has so encouraged the spirit of socialism as the Master's report in this very case. We believe that a corporation which has led the public to believe that its earnings, over and above handsome dividends declared, have been absorbed in operating expenses is equitably estopped from asserting that the property thereby purchased is really additional capitalization. It is specious, but not more than specious, to say that the hiding away of earnings in this manner is equivalent to declaring dividends and investing the proceeds in a further issue of stock. It is not the equivalent, because the public might have regulated the rates and reduced the net earnings, if the latter had not been hidden away. In fact, the very reason for hiding away the profits was to prevent the public from regulating the rates.

We do not expect the court to reach this point in its investigation of the present case, because the rule of present value, when applied by the correct test of cost of duplication by another company, and by a plant sufficient to accomplish the same result with up-to-date methods, is far more than sufficient to decide the case. It would be manifestly improper for us to ask the court to decide questions whose decision is not necessary to a disposition of the controversy now before it; but in discussing the questions involved, we have felt that the subject should be discussed as a whole, and from all points of view; and we believe that the position which we have taken will ultimately be decided to be correct.

The passages quoted by Mr. Beck at pages 101-2 do not conflict with our argument, since they relate to the construction of the Fourteenth Amendment, while our argument was a consideration of the true basis for the liberal percentage of return which the State ought to allow, although the Fourteenth Amendment does not so require.

(Page 103:) We do not think that Mr. Beck would find that the doctrine of basing the return upon the capital actually invested would result in a destruction of railroad values comparable to the San Francisco earthquake. No case has as yet reached the Federal courts which would indicate such a state of affairs. So far as we remember the judicial precedents, they always disclose the case of a railroad whose original cost is greater than its present value. We believe, however, that a revaluation such as is here suggested would show (so far as a valuation based upon expert testimony can be said to show anything) that in many cases the present value approximates the original cost. This will be largely on account of the enormous present value of the terminals, and of the rights of way through cities. But there are few railroads, and few corporations of any kind, which approximate to the situation of the complainant.

XI. The Costs.

(Page 104:) This point, which indeed does not concern us except as taxpayers, we have already referred to in connection with Mr. Beck's point II.

XII. The Condition upon the Injunction.

(Page 108:) Probably the most extraordinary proposition laid down by Mr. Beck is that a Federal court may enjoin the enforcement of a State law, but cannot put a reasonable condition upon its injunction because this would be "to exer-

cise a State function." We contend that the Federal court, which has entire discretion to leave the initial stages of the controversy to the State tribunals, may require, as a condition upon a complainant in a suit of this kind, that it reduce its charge to the minimum constitutional rate, and in that way conform to the orders of the State authorities so far as the orders are not in conflict with the Federal Constitution. We supposed that this proposition was one of comity as well as of equity. Yet Mr. Beck says that comity to the State authorities requires that they be unconditionally enjoined.

He now discloses the real motive of the complainant for applying to Judge Lacombe instead of suing or standing suit in the State court; for he says that "even if a judge of the State court had the undoubted power which the defendants asked the trial court to exercise, yet the mere fact that the court exists as part of the Federal Government deprived it of that power." In other words, assuming that the State court could have made an equitable disposition of the matter by an injunction conditioned on the reduction of the rate from 100 to 84 cents (to assume the correctness of Judge Hough's calculation), Mr. Beck thinks that it was proper for the Federal court to oust the State court of jurisdiction, and thus prevent the citizens of the State from saving the difference.

(Pages 110-12:) Mr. Beck's remarks about the Stevens committee and the Gas Commission are based upon the Carter affidavit, which we have already discussed in connection with the final pages of Mr. Mathewson's brief; and we have already expressed our surprise that counsel should indulge in reflections upon the officers of the State of New York, based upon nothing better than the insinuations of a professional affiant.

Nor is there any foundation for the reflections upon administrative tribunals, as to the impartiality of their judgments. Probably no case before an administrative tribunal

puts it more distinctly in the position of being both court and prosecutor than a contempt case puts a judge; yet it is the opinion of the great majority of the bar that the powers of the court in contempt cases should be fully preserved. We believe it to be a fact that the rights of the public as against a public service corporation will be better protected when the public is represented by counsel and the administrative tribunal sits in a judicial capacity only, than when that tribunal is acting of its own motion, and the public is not otherwise represented.

(Pages 112-13:) If circumstances had not forced Mr. Beck to prepare his brief with extreme haste, he would hardly have set forth our seven propositions as indicating the rules of testimony which should govern an administrative commission. There is not a single one of the seven propositions which is stated by us to be tenable as a rule of evidence in the administrative tribunal.

On the other hand, the first rule stated is one well-settled and frequently referred to by this court, and the other rules are necessary corollaries of this court's opinion in the Jasper case.

Mr. Garver's Brief.

(Page 26:) We have submitted no such proposition as that special franchises should "now be absolutely ignored in the regulation of rates." They are to be given the weight which is attributed to them in New York cases (App. Br., pp. 221-2); and when they are what we have called compound franchises (*Id.*, p. 221) they must receive a still greater valuation. Within the past dozen years, following the precedent set by this complainant, there has been a great deal of improper over-capitalization, pretending to be based upon franchises; but the public has been in no way responsible unless the public becomes an accessory to every improper act that is committed, until the legislature expressly prohibits it.

(Page 28:) The Public Service Commissions Law of New York, in forbidding further capitalization of franchises, did so in order that there should be no further imposition by promoters upon investors, and no further excuse for keeping up rates on the ground that otherwise ignorant investors would lose expected profits. The primary object was to protect the investor. The object of this provision has been stated as follows: "Furthermore, the holding corporation is the most effective instrument of over-capitalization, with the consequent injury to the public interest. It is the favorite method of capitalizing the unearned increment coming to a public service company as a great city grows in population. As fast as the street railroad company's, or the gas company's, or the electrical company's earnings thus increase, its old stock is converted into bonds and new stock issued to represent that increment. The new stock is sold to the public, with fabulous profits for the syndicate managers. Legislative regulation of rates is then resisted on the ground that the unfortunate stockholders would lose their dividends. The State is put into a dilemma in which it ought not to be—a dilemma between doing justice to the public who have made the increment, and doing mercy to the ignorant stockholders who have invested their savings in the new stock. The profit of the promoters is unreachable."

Even if the main or only object of the statutory provision had been to prevent overcharges by way of rates, enacting the provision would not be an implied concession, as Mr. Garver argues. The statute was passed while this suit was pending, and after Judge Lacombe had decided that simple franchises could be capitalized and made the basis of rates. It is very common for a legislature under such circumstances to pass a law that will settle the question for the future, leaving the courts to decide what was the law in the past. One of the parties to the controversy always thereafter insists that the new legislature was a concession that he was right; and this court has frequently been called upon to listen to

such an argument, particularly tariff cases; but the fallacy of the argument has, so far as we are aware, been always recognized.

(Pages 29-33:) Mr. Garver here sets forth more at length than anywhere else the complainant's contention that the legislatures of 1884 and 1886 authorized and approved its inclusion of special franchises at a certain rate as part of its capitalization. The facts upon which this curious claim is based are as follows: The statute of May 28, 1884 (c. 367) under which complainant was formed was the result of what is now commonly called a "sneak bill." It was entitled "An act to authorize the consolidation of manufacturing corporations" and referred at two places to the general act under which those corporations were generally organized, and which act did not authorize them to receive what are now called special franchises (App. Br., p. 309). It in terms authorized the consolidation of corporations "organized under any general or special law of this State for the purpose of carrying on any kind of manufacturing business of the same or of a similar nature," and provided that the "capital shall not be larger in amount than the fair aggregate value of the property, franchises and rights of the several companies thus to be consolidated." There was nothing in the act to call attention to the fact that these so-called special franchises could be capitalized thereunder; but the astute counsel who drew the bill undoubtedly had in mind the case of Nassau Gas Light Co. *v.* City of Brooklyn, 89 N. Y., 409, decided two years previously, which held that a company organized under the Gas Light Act was within the meaning of a certain tax law a manufacturing corporation.

The circumstances connected with the passage of the law were so suspicious, and the use to which it was put by this complainant was so contrary to what had been supposed by others to be its intent, that the means used to pass the law were investigated by the Gilbert Committee of 1885; but

the counsel who obtained the passage of the bill absented himself until after the evidence was closed (pp 5365, 6214, 6225-8, 6516). Complainant's papers were filed in November, 1884. Immediate efforts were made to secure action from the legislature. The complainant took steps to accelerate public sentiment in country districts against the bill (pp. 6452-61). The Gilbert investigating committee, appointed at that session, filed its report on March 1, 1886 (p. 5325). The committee was appointed simply for the purpose of ascertaining what legislation should be adopted in the premises. The chairman reported that in his opinion the statute, strictly construed, did not permit the formation of this complainant, and also that it was unconstitutional (pp. 5351-5), and said that the company ought to be "annulled by the legislature" (p. 5355); but this was in the preliminary portion of his report, and when he came to make his recommendations, he recommended only legislation to prevent similar performances in the future (pp. 5381-2). It does not appear that the facts were ever brought to the attention of the Attorney General. The only thing that he could have done would have been to bring an action in the nature of a *quo warranto*, and have the corporation wound up. This would have been a drastic remedy. The members of the committee not being able to agree, and the Broadway railroad scandal then occupying the attention of the legislature and dominating the public mind, nothing was ever done about it. Since the legislature never did anything about a matter as to which it could not have done anything, complainant has during recent years insisted that its capitalization had some kind of legislative confirmation, which estopped the State from disregarding the appraisals which its promoters made of its tangible and intangible assets. We never heard of a similar claim in any other case, and no reason or authority was ever assigned for it. One of the reasons why the whole subject was dropped was undoubtedly because it was the general opinion of the bar that the nominal capitalization of the company could have no influence

on the matter of rates. The recent case referred to by Mr. Garver (Matter of Attorney General, 124 N. Y. App. Div., 401), was a case where the Attorney General did not bring before the court any question relating to the original organization of the company. He questioned this right to purchase the stocks of the competing companies in 1900. The second paragraph of the syllabus contains a curious blunder, in stating that the case decided that the consolidation of 1884 did not violate a statute of 1892.

(Page 45:) There is no doubt that a special franchise, like any franchise, is property, and cannot be taken without compensation; but the cases cited do not consider the question what the compensation should be. If the State had undertaken to condemn the Broadway railroad franchise before a rail had been laid, instead of arbitrarily annulling it, interesting questions would have been raised, upon which the cases cited by us in our main brief at pages 217-23 and 228-9 throw what light we as yet have. We do not think that much of value is added to these cases by the utterances of any of the gentlemen quoted at pages 47-8 of Mr. Garver's brief.

(Page 52:) If the Attorney General is to be understood as stated here, we do not concur with him. The cases cited by us, as we construe them, do not permit the legislature to "ignore the special franchises in fixing a rate." These franchises are what entitle the various portions of the tangible property to be valued together as a going concern, instead of separately as second-hand material, as seems to have been done by the condemnation commissioners in the White Plains case. The franchises are not destroyed by giving them no further value than this.

(Page 53:) Mr. Garver maintains that there cannot have been an implied condition, in granting the special franchises of the constituent companies, that they were subject to the

legislative right to regulate rates, because these franchises "were granted long before the days of universal rate regulation;" but twenty pages before he had pointed out that the right to regulate rates had "long been recognized at common law" and "been the subject of legislation from the earliest days of parliamentary history." It is impossible to tell whether the members of the legislature kept this primeval principle in mind while they were voting, but they must be presumed to have done so, as grants of this kind must be construed in favor of the people (App. Br., p. 292). Certainly nobody until long after the period of these old grants ever thought of making such items the basis of separate capitalization.

(Page 59:) Here again we cannot agree with the quotation from the Attorney General, if rightly to be understood as Mr. Garver understands it. Mr. Garver bases upon it the claim that special franchises must be valued according to the maximum rate permitted to be charged, using what seems to us the very extraordinary opinion in the Brooklyn Union Gas case, 188 N. Y., 334, which holds that a maximum limit, fixed for all gas companies in a general statute, is so conclusively presumed, until its repeal, to be reasonable, as to each particular company, that the question of reasonableness cannot be tried in an action on a *quantum valebat*. The logical result of Mr. Garver's argument would be that the legislature could never reduce a maximum rate once permitted; and this is confuted by the Stanislaus County case.

Good-will.

(Pages 69-78:) The questions of good-will and "going concern" are discussed in our main brief at pages 95-7, 139-40, and 196-7.

To what we have said in relation to the "going concern" element, we may add that a considerable "going concern"

item is really included in the Master's valuations and is part of the basis of the decree of the court. These valuations are based upon the testimony of Messrs. Mayer and Simpson. Mayer's figures as to the manufacturing plant and holders included an allowance of 10 per cent. for expenses of supervision of, and 5 per cent. as average loss of interest on capital pending construction (pp. 1320-1). Simpson, as to the mains and services, also allowed for these items, together with all others which might be incidental to building up a "going concern." He "added for engineering expenses, clerical expenses, city inspection, interest, and wear and tear on tools and appliances, obstructions on the street which would delay the work, serious obstructions met with underground, suits for damages and other undistributed expenses" (p. 1747). This would be sufficient to duplicate the present plant of the complainant, if the city should undertake this work itself or authorize a rival company to do so; and as soon as that work was completed, the complainant would have to abandon all claim to a return on any fictitious item, or go out of business; as was recognized by everybody in the cases cited at page 230 of our main brief.

It is difficult to reconcile Mr. Garver's position at page 70 as to the permanence of the use of gas (which is indeed involved in the court's valuation of the manufacturing and distributing plant, practically without depreciation) with Mr. Beck's argument (at pages 89-90 of his brief) that we shall speedily be lighted by radio-activity.

The tax cases cited at page 74 do not help complainant. As long as a company is permitted to have a monopoly and charge high rates, it is proper to tax the company on that basis, and during the period of high rates the stock of the company will stand very high. The State is estopped from taxing it on this high valuation if it begins to regulate the rates and thereby reduce the market price of the stock, but it is not estopped from allowing high rates to an infant industry, taxing it proportionately, and then, when the in-

dustry has passed out of the period of infancy, reducing the rates and the taxes simultaneously. This is a manifest corollary from the Stanislaus County case, 192 U. S., 201. When the rate of return on the irrigation company which was then before the court was reduced from 18 per cent. to 6 per cent., the market value of the stock must have fallen, and under the California constitution the taxes must have been reduced, yet the reduction of rates was unhesitatingly sustained.

Existence of the Special Franchises.

(Pages 79-80:) Mr. Garver attempts to save his client by statements of facts unproved; by claiming that consents are being given to open the streets, which amount to a renewal for perpetuity of franchises which had expired. We are dealing with the facts in the record, and if any such proof had been offered, it would have been dealt with at the time of its offer. It may be added, however, that the Metropolitan grant, under which we concede it to be lawfully in possession of the streets of the whole borough as a hold-over tenant from year to year (App. Br., pp. 292, 302-3), the company has a right to extend its system of mains through any street within the borough under the Deehan case, 153 N. Y., 528; and that it is the duty of the proper authorities under proper regulations to issue permits accordingly.

(Pages 80-1:) This passage, like many others in Mr. Garver's brief, is based on the theory that we have denied the present existence of special franchises. We simply deny that there are any franchises which could not be made to expire within one year after May 1, 1906, at the option of the city, and which therefore, in a suit against the city and its inhabitants, based upon them, should not be treated as then expiring (Kingsland *v.* The Mayor, 110 N. Y., 569, 583). The complainant had had no occasion, up to the time of the

submission of this case to the Master, to ask for the continuance of any franchises, since the grant to the Municipal company did not expire until March 22, 1907 (pp. 5116-19), and the grant, although its validity was always doubted, had never been actually contested by the city.

(Page 83:) The first case cited here is explained in our main brief at page 299. The second case has no application. In Wakefield *v.* Village of Theresa, 125 App. Div., 38, the plaintiffs were hold-overs under an electric lighting franchise granted in 1895 and expiring in 1903. The village authorities had no power to grant such a franchise for more than five years under the statutes cited by the court. The franchise was given by a contract which provided for a purchase of the grantees' electric appliances in case it should not be renewed. The grantees held over "from year to year," as the court states. In the middle of one of the years the village suddenly demanded a removal of the poles and wires, without even offering to purchase the appliances. An injunction was of course granted.

(Page 85:) Mr. Garver, like his colleagues, brings up the special franchise tax as a proof that his client had special franchises. This fact needs no proof, for we have conceded it. The question between us is as to the duration of the franchises, as we have shown both in our main brief and in this reply, and the franchise tax is laid without any reference whatever to the question of duration, nor does the assessment for any one year have any bearing upon the rate of return or the assessment for the next year.

So far from the position of the State being a harsh one, we have called attention to the fact that it has been very mild indeed (App. Br., p. 239*n*). To test this, let us apply the computation approved in the Jamaica case to the assessment for 1906, based on the experience of 1905, as found by

Judge Hough. The assessment would be worked out as follows:

Total tangible property	$47,831,435
6% thereon	$2,869,886
Income at $1	5,891,597
Income from intangible special franchises	$3,021,711
Or 6% on	$50,361,850
Total tangible special franchises (mains and services)	14,630,000
Proper special franchise valuation for 1906 at $1 rate	$64,991,850

It should therefore have been considerably more than double what it actually was.

(Page 85:) There is no doctrine in New York of perpetuity of special franchises in general when granted to corporations. The question upon every special franchise grant is as to the intent of the grantor, with the presumption against the grantee. In the first two cases cited the grant under consideration was made to individuals, so that the question whether if a grant is made to a corporation it is intended to be for a time longer than the life of the corporation was not involved. The remarks to which Mr. Garver refers discussed the effect of granting such a franchise to individuals and their associates, accompanied by a provision "that the association should not be deemed dissolved by the death or an act of any associate, but his successor in interest should stand in his place" (27 N. Y. at p. 614). It is difficult to consider such a grant as anything but one in perpetuity, if it is so drawn as to be irrevocable. Both of these cases held the grant to be void. The next two cases cited by Mr. Garver are fully discussed in our main brief at pages 305-7. The Roby case, (142 N. Y., 176, 180) merely follows the case next before

cited. Trustees of Southampton *v.* Jessup, 162 N. Y., 127, also turns upon the effect of a grant of a franchise to an individual. Being a grant to an individual it was held to be permanent, but was construed with extreme strictness (see S. C., 173 N. Y., 84; 195 U. S., 624). The case last cited is also of a grant to individuals, although the remark referred to scarcely amounts even to a *dictum*.

Replying at page 89 to our remarks upon the authorities concerning the nature of the New York Central & Hudson River Railroad Company's title to real estate, Mr. Garver says that to ascribe any less permanent character to the mains of his clients "is to make light of the facts." We need only refer to the testimony of Mr. Simpson that he had actually seen 95 per cent. of the complainant's mains, although some of them had been in the streets since 1824; that 27 miles of the mains were disused, 70 miles abandoned within the past year, and 222 abandoned in all, besides those replaced (pp. 668, 1681, 1746-7).

(Page 92:) There is nothing in the Deehan case authorizing the inference that the Harlem franchise, granted when the city limits were confined to the island of Manhattan, was extended northward by the large annexations of territory made long subsequent thereto. The Missouri case cited by Mr. Garver is doubted in New York (People *ex rel.* Brooklyn Union Gas Co. *v.* Littleton, 110 N. Y. App. Div., 720). Franchises are often sold for what is at the time their supposed value. If the city or village which has sold such a franchise subsequently absorbs all the neighboring counties, does the grantee get a franchise in those counties for nothing? And if this is not the case when the franchise has been sold for a consideration, is it the case when the franchise was given away?

(Page 95, top:) The complainant has never "been in undisputed enjoyment of" the franchise known as the State grant, in such a sense as to give it rights which that grant

did not intend a corporation to have. The Harlem grant did not expire until 1905, and the Municipal grant did not expire until 1907; and under the Metropolitan grant the company has been a hold-over during the whole period.

(Pages 95-6:) The *dicta* in the Long Acre case, 188 N. Y., 361, 366, 368, did not overthrow the general principle that franchises are non-assignable unless the power to assign is expressly granted; a principle well recognized in New York as well as elsewhere (Troy & Boston R. R. Co. *v.* Boston, Hoosac Tunnel & Western Railway Co., 86 N. Y., 107, 117; Bath Gas Light Co. *v.* Claffy, 151 N. Y., 24, 34-6, 44; Central Transportation Co. *v.* Pullman Car Co., 139 U. S., 24, and cases cited; Snell *v.* Chicago, 152 U. S., 191, 199; Rochester Co. *v.* Rochester, 205 U. S., 236; 10 Cyc., 1091; 20 Cyc., 1158; 14 Am. & Eng. Encyc. of Law, 2d Ed., p. 921). The point decided was that an unauthorized assignment is at worst "voidable at the election of the State or city" (188 N. Y., 369). The point seems not very important here, because the Anthracite company never had a valid franchise (App. Br., pp. 308-10).

(Page 101:) We concur in Mr. Garver's proposition that "The right to lay mains necessarily includes the right to use them for conducting gas, when laid;" and this is precisely what we have argued as to the complainant's franchises (App. Br., pp. 298-9).

(Pages 103-6:) It is undoubtedly true that the local authorities cannot lawfully prescribe terms or conditions not authorized by statute, when granting franchises. If they were allowed to do so, they might easily impose such conditions that there would be only one competitor, when the legislature intended that there should be free competition. Such a case was Beekman *v.* Third Avenue Railroad, 153 N. Y., 144, cited by Mr. Garver. The court held such an

attempt on the part of the public authorities to be illegal, and enjoined proceedings thereunder.

But it is a very different proposition to say that a corporation which has accepted a franchise offered under such conditions can claim to hold the franchise and at the same time repudiate the conditions. We quote from the Pennsylvania Supreme Court, a later case than Pittsburg's Appeal, so much relied upon by Mr. Garver. In Allegheny City *v.* Railway, 159 Pa. St., 411, 418-9, the court says: "The conditions in the present case being within the power of the city to prescribe, and therefore entirely valid, the other question raised becomes unimportant. It may be well to say, however, that the ordinance of consent was an entirety, to be accepted or refused just as it was, and acceptance was expressly made a condition precedent. Nothing therefore could make the ordinance a consent but the performance of the condition, the acceptance of the whole. Even if any part of the condition was impossible or *ultra vires*, the result would only be that the consent could never become effective. No amount of hardship, or impossibility, or illegality, will avoid the bar of a condition precedent unperformed. Co. Litt., 206; 2 Blackst., 157."

This ancient and very proper rule, dating from Coke and Blackstone, is not denied in New York, as we construe the authorities, although complainant endeavors to torture a contrary ruling out of some of them (Dusenbury *v.* Traction Co., 46 App. Div., 267, 272. See also Staten Island Railroad case, 34 App. Div., 180).

(Page 117:) Here Mr. Garver restates the remarkable proposition that the State is estopped by its preliminary and provisional assessment of special franchises, while complainant itself is not estopped by its solemn oath that the franchises are worth nothing above the value of the mains and services (see App. Br., pp. 81-3). But we have already shown that the assessment was far too low. The company's

modest valuation of its franchises was correct, from the point of view of a person endeavoring to sell them; for they were revocable. The State's assessment was not half large enough, because until revoked they are taxable in proportion to the income which they permit the complainant to earn.

Respectfully submitted,

EDWARD B. WHITNEY,
GEORGE S. COLEMAN,
Of Counsel for Appellants.

No. 398.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

Office Supreme Court, U. S.
FILED.
NOV 5 1908
JAMES H. McKENNEY,
Clerk.

WILLIAM S. JACKSON, as Attorney-General of the State of New York,

Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK.

BRIEF FOR APPELLANT.

WILLIAM S. JACKSON,
Attorney-General for Appellant,
The Capitol,
Albany, New York.

New York:
MARTIN B. BROWN COMPANY, PRINTERS AND STATIONERS.
Nos. 49 to 57 Park Place.
1908.

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MARTIN B. BROWN CO., Printers, 49 to 57 Park Place, N. Y.

(19100)

Supreme Court of the United States.

OCTOBER TERM, 1908.

WILLIAM S. JACKSON, as Attorney-General of the State of New York,
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vs.
CONSOLIDATED GAS COMPANY OF NEW YORK.

No. 398.

BRIEF FOR APPELLANT.

(*References are to pages of Printed Record.*)

PART I.

Statement.

This is one of three appeals from the final decree of the Circuit Court of the United States for the Southern District of New York, Hon. Charles M. Hough, District Judge, entered April 3, 1908, upon the report of the Special Master, Arthur H. Masten, Esq., to whom the case had theretofore been referred "to take all the testimony herein, make all needed computations and fully find the facts" by Hon. E. Henry Lacombe, United States Circuit Judge.

The cause was entitled below:

CONSOLIDATED GAS COMPANY OF NEW YORK,
Complainant,
against
WILLIAM S. JACKSON as Attorney-General of the State of New York; WILLIAM TRAVERS JEROME, as District Attorney of New York County; WILLIAM R. WILLCOX, WILLIAM McCARROLL, EDWARD M. BASSETT, MILO R. MALTBIE and JOHN E. EUSTIS, constituting the Public Service Commission of the State of New York for the First District, and The City of New York,
Defendants.

The parties are the same as originally, except that William S. Jackson, as Attorney-General, has been substituted in place of his predecessor in office, Julius M. Mayer, and the Public Service Commission of the State of New York for the First District has been substituted in place of Frederic E. Gunnison, John C. Davies and Lucian L. Shedden, constituting the New York State Commission of Gas and Electricity, the latter Commission having been abolished and the Public Service Commission having been created by chapter 429, Laws of New York, 1907.

The appeals were taken by William S. Jackson, as Attorney-General of the State of New York (No. 398, Assignments of Error, 481-484); William R. Willcox *et al.*, constituting the Public Service Commission of the

State of New York (No. 396, Assignments of Error, 435-439), and City of New York (No. 397, Assignments of Error, 444-477). The District Attorney of New York County took no appeal.

History of Litigation.

On May 1, 1906, the complainant, a corporation organized under the laws of the State of New York for the purpose of manufacturing and selling gas in the City and County of New York, filed a bill in equity against said defendants, asking:

> "1. That it be adjudged and decreed that chapters 736 and 737 of the Laws of 1905, and chapter 125 of the Laws of 1906, and the order of the Commission of Gas and Electricity of the State of New York, of February 23, 1906, are illegal and void, because in contravention of the Fourteenth Amendment to the Constitution of the United States, as aforesaid, and of section 10 of article I., of the Constitution of the United States, in that it impairs the obligation of the contract rights of your orator hereinbefore referred to.
>
> 2. That it be adjudged and decreed that your orator has no adequate remedy at law from the injury which would result from the threatened enforcement of said acts and order, and that such injury would be irreparable.
>
> 3. That it be adjudged and decreed that your orator be granted writs, both temporary and permanent, of injunction, issuing out of and under the seal of this Honorable Court, against the defendants, restraining them and each of them, and each of their officers, agents, servants and employees, and any and every person acting under and by virtue of the authority of said acts and order from in

any way enforcing or attempting to enforce said acts and order, or any of the provisions thereof against your orator, etc."

Chapter 736, Laws of 1905 (to take effect July 1, 1905) restricted the charge for gas sold to the municipality of New York to seventy-five cents per thousand cubic feet, and provided minimum candle power and pressure, and for violations of the act imposed a penalty of one thousand dollars "for each offense, to be sued for and recovered in the name of and by The City of New York for its benefit" (21).

Chapter 737, Laws of 1905, established the Commission of Gas and Electricity, with general powers of supervision over persons and corporations engaged in supplying gas and electricity to the public; to investigate and ascertain the quality and fix the standards of illuminating power, purity and pressure of gas, and require conformity to such standards; to examine the books and affairs of such persons and corporations and to compel the production before it of books and papers pertaining to the affairs under investigation, to subpoena witnesses, take testimony and administer oaths to witnesses upon such investigations, and upon complaint of municipal officers or consumers, and after hearing and investigation, to fix the maximum price of gas or electricity (22).

The Commission, Gunnison et al., appointed under this act, having been complained to and having held an investigation, issued its order dated February 23, 1906, and to take effect May 1, 1906, fixing the maximum price to be charged by the complainant for gas in the Borough of Manhattan at eighty cents per thousand cubic feet. The order provided for candle power and pressure, as in Chapter 736, Laws of 1905. (29 Opinion of Commission, 31.)

But the New York Court of Appeals recently has held that the provision of Chapter 737, Laws of 1905, to the

effect that the rate fixed by the Commission should continue for three years and thereafter indefinitely until fixed anew *upon complaint made by municipal officers or consumers,* no authority to make complaint and no opportunity or right to apply for a new adjustment of rate having been given to the company, was in violation of the Fourteenth Amendment to the Federal Constitution, as denying equal protection of the laws. (Village of Saratoga Springs *vs.* Saratoga Gas Company, 191 N. Y., 123, 149.) Therefore, the question before this Court as to the validity of the order of the Commission of Gas and Electricity mentioned in the decree has been eliminated, although the facts as to the Commission's investigation and fixing a rate, etc., remain in the case.

Chapter 125, Laws of 1906 (the "Eighty-Cent Gas Law," to take effect May 1, 1906), restricted the price of gas to consumers in the Borough of Manhattan, other than the City, to eighty cents per thousand cubic feet. The provisions for candle power and pressure were the same as in Chapter 736, Laws of 1905 (30).

The "Eighty-Cent Gas Law" and the order of the Commission were to go into effect May 1, 1906. On that day the bill of complaint was filed.

On May 18, 1906, before the new law was in any respect operated under or sought to be enforced, Judge Lacombe, upon motion of complainant for an injunction *pendente lite,* issued a temporary injunction, restraining defendants "from in any way enforcing or attempting to enforce the said Acts and order or any provisions thereof, against the complainant." The order authorized the complainant to continue its former charge of one dollar per thousand cubic feet to consumers other than the City of New York, notwithstanding said Acts and order, provided it pay weekly into a designated bank, subject to the further order of the

Court, twenty per cent. of the amount received for gas so furnished (36).

June 4, 1906, the defendants filed their answers. (Attorney-General, District Attorney and Commission, 38-57. City of New York, 57-135.)

June 16, 1906, Judge Lacombe continued the injunction order during the litigation. (145 Opinion, 135.)

July 5, 1906, Judge Lacombe appointed the Special Master (148).

May 20, 1907, after taking 6,956 printed pages of testimony and 2,771 printed pages of exhibits, the Special Master submitted to counsel his so-called draft report (151-252), and after receiving and passing upon (252-291) or filing (291-320) written suggestions for amendment, filed his final report on June 24, 1907 (291). (Exceptions to report, 324-386.)

The argument of the motion to confirm the Special Master's report was had before Judge Hough, and his opinion was filed December 30, 1907 (388-422).

On application of all parties, additional findings were made (422-430) and the final decree was filed April 3, 1908 (430-434).

The Decree.

The Court decreed:

> "I.—The report of the Master herein is confirmed except in the following particulars, as to which the exceptions to said report are sustained and its findings modified:
>
> "(a) The real estate, valued by the Master at $13,461,000, included certain parcels held by complainant for future use, but not at the date of the beginning of this action actually in use by it in

its gas business; and omitting from the capitalization of complainant for the purposes of this suit such unused parcels, the valuation of the portion of such real estate actually and necessarily employed by it in its gas business at said date is hereby fixed at $11,985,435.

"(b) The valuation of the 'working capital' must be reduced from $3,616,000, at which it was fixed by the Master, to $1,616,000, at which amount it is hereby fixed.

"(c) The capitalization as fixed by the Master must be further reduced, by striking out therefrom the item 'Coal & Coke Co. $50,000'; and from the statement of net earnings for the year 1905, as contained in the Master's Report, there must be correspondingly deducted the 'National Coke & Coal dividend $5,000.'

"(d) The capitalization as fixed by the Master must be further reduced, by striking out therefrom the item, 'Astoria *i. e.*, capital invested in production of gas secured from other companies, $12,000,000.'

"(e) The capitalization as fixed by the Master must be further reduced, by striking out therefrom the item, 'Franchises and good will, $20,000,000'; and for said item there should be substituted the sum of $12,000,000, the Court finding that the valuation of the intangible special franchises of the complainant is at least that sum.

"(f) The following items allowed by the Master in his estimate of the complainant's operating cost must be disallowed:

Interest on taxes.....	$94,506.29
Legislative investigation expense...	25,671.74
Franchise tax litigation expense....	63,401.65

"(g) The following items, amounting in all to $2,013,393.84, were allowed by the Master in his estimate of the complainant's operating cost, to wit:

Repairs to apparatus.....	$169,197.39
Repairs to buildings.....	24,900.69
Repairs to tools and implements..	16,228.48
Repairs to gas stoves.....	55,954.35
Repairs to mains.....	126,110.31
Repairs to services.....	89,033.46
Repairs to meters.....	172,925.52
Repairs to buildings.....	15,116.68
Repairs to tools and implements..	15,610.59
Contingent expense (includes renewals)	1,328,316.37
Total	$2,013,393.84

"The fact and propriety of said expenditures for 'repairs' is not questioned, but the final item of $1,328,316.37 is believed to be larger than required; and in place of said aggregate sum of $2,013,393.84, there should be an allowance of eleven cents per thousand cubic feet on the actual production of complainant's own works to cover repairs, renewals and depreciation, mediate and ultimate, amounting to $1,172,359.10.

"(h) The Court finds the gross income, operating expense and net income of complainant's gas business for the calendar year 1905, upon the basis of the prices charged for gas during that year, to be as shown in the following tabulation, in lieu of the Master's tabulation of 'net earnings for the year 1905' result in the figure $4,983,928.31:

Income from complainant's own product, gross	$10,825,027.30
Expenses	6,809,552.28
Net	$4,015,475.02
Net from purchased gas	1,865,717.43
Total net income	$5,881,192.45

"The Court finds that said sum of $1,865,717.43 represents more than a normal profit upon the volume of purchased gas, in that the amount paid by complainant to other companies for the same ($997,039.80) was paid under temporary and expiring agreements, and did not include any reasonable recompense or return upon the value of the investment required to produce said gas.

"The Court estimates that owing to a probable increase in sales of gas and in cost of gas obtained from other companies, and probable change in the source of manufacture of some portions of such gas, while the total net income for the year beginning May 1, 1906 (being the date when chapter 125 of the Laws of 1906, of the State of New York, took effect, and when this action was begun) would remain the same upon the basis aforesaid, yet, if the price of gas were reduced as provided by chapter 736 of the Laws of 1905 and chapter 125 of the Laws of 1906, both of the State of New York, the net income of complainant for said year beginning May 1, 1906, would be reduced to the sum of $3,024,592.45.

"The Court deems it unnecessary to make express findings as to the present existence of the franchises claimed by complainant by derivation

from the New York Gas Light Company, the Manhattan Gas Light Company, the Municipal Gas Light Company and the Metropolitan Gas Light Company, and therefore does not pass upon the Master's findings as to the same, but finds that those claimed by it by derivation from the Knickerbocker Gas Light Company (including the Anthracite Gas Lighting and Heating Company and the so-called State Grant) and the Harlem Gas Light Company exist and are owned by the complainant, and are sufficient to meet all its requirements.

"II.—The true valuation, as of the time of the beginning of this suit, of the complainant's property actually employed in its business of manufacturing and supplying gas is as follows:

Real estate	$11,985,435.00
Plants	15,500,000.00
Mains	12,636,000.00
Services	1,994,000.00
Meters and miscellaneous	4,100,000.00
Working capital	1,616,000.00
Total of tangible assets	$47,831,435.00
Special franchises	12,000,000.00
Total	$59,831,435.00

"The foregoing items do not include the amount of complainant's investment in the securities of other gas companies, from which companies it was obtaining a large part of the gas which it delivered to its customers, nor the value of the property of such other companies or any part thereof employed in the production and delivery to complainant of such gas.

"III.—The lowest rate of return which can be considered legislatively fair, just or reasonable upon the value of the property employed by complainant in the business of manufacturing and supplying gas, is six per cent., at which conclusion the Court has arrived in part by taking judicial notice of local conditions in the City of New York; and under the two acts and the order, copies of which are annexed to the bill of complaint as Exhibits 'A,' 'D' and 'C,' to wit, chapter 736 of the Laws of 1905 of the State of New York, chapter 125 of the Laws of 1906 of said State and the order of the Commission of Gas and Electricity of the State of New York, made on the 23d day of February, 1906, and directed to the complainant, the net annual income which the complainant can earn upon the property employed in its gas business as aforesaid is less than six per cent.

"IV.—The pressure required by said two acts and the order aforesaid is not physically impossible if the entire system of gas distribution in the City of New York be reconstructed; but compliance with such requirement is commercially impossible under the rates for gas prescribed by said two acts and order.

"V.—Complainant has no adequate remedy at law for the injury which would result from the threatened enforcement of either of the aforesaid acts or of the aforesaid order, and such injury would be irreparable; and, this suit is not a suit against the State of New York, either as against the defendant Attorney General or as against the defendant District Attorney, or as against the defendants the Public Service Commissioners aforesaid.

"VI.—The two said acts and the order mentioned in the bill of complaint: Chapter 736 of

the Laws of 1905 of the State of New York, entitled, 'An Act in relation to the price of illuminating gas furnished or sold to The City of New York, and providing a penalty for violation'; chapter 125 of the Laws of 1906, of said State, entitled, 'An Act in relation to illuminating gas in the City of New York, and regulating the quality and pressure thereof and the price to consumers, other than said city, and providing a penalty for violation'; and an order of the Commission of Gas and Electricity of the State of New York, made on the 23d day of February, 1906, and directed to the Consolidated Gas Company of New York, copies of which were annexed to the bill of complaint herein, are each of them hereby declared and adjudged to be illegal and void, because in contravention of the Fourteenth Amendment to the Constitution of the United States, in that they take complainant's property without due process of law and without just compensation, and deny to complainant the equal protection of the law.

"VII.—The defendant The City of New York and each of its officers, agents, servants and employees are perpetually enjoined and restrained from suing for the penalty of forfeiture described in said chapter 736 of the Laws of 1905, or in any other way enforcing or attempting to enforce the said act against this complaint.

"VIII.—The defendants William S. Jackson, as Attorney General of the State of New York, and William Travers Jerome, as District Attorney of New York County, and each of them, and each of their agents, servants and employees, are perpetually enjoined and restrained from suing for the penalty or forfeiture described in said chapter 125 of the Laws of 1906 or in any other way enforcing or at-

tempting to enforce the said act or the order of the Commission of Gas and Electricity aforesaid against this complainant.

"IX.—The defendants William R. Willcox, William McCarroll, Edward M. Bassett, Milo R. Maltbie and John E. Eustis, constituting the Public Service Commission of the State of New York for the First District, and each of them, and each of their agents, servants and employees, are perpetually enjoined and restrained from applying for a mandamus or injunction to compel compliance with said chapter 125 of the Laws of 1896, or with said order of the Commission of Gas and Electricity, or in any other way enforcing or attempting to enforce the said act or the order of the Commission of Gas and Electricity aforesaid against this complainant.

"X.—It is further adjudged that the complainant recover of the defendants its costs and disbursements, to be taxed by the Clerk, one-half thereof to be paid by The City of New York and one-half thereof to be paid by defendant William S. Jackson, as Attorney-General of the State of New York; and that said costs, so to be taxed, include the repayment to the complainant of the amount of fees and disbursements of the Special Master paid from a fund heretofore directed to be paid into Court by orders dated May 18, 1906, and June 16, 1906.

"XI.—Any party hereto may make application at the foot of this decree, making such application by supplemental bill or otherwise, as such party may be advised, for any relief to which such party feels lawfully entitled by reason of change of circumstances since the beginning of this suit—C. M. Hough, *D. J.*

"The Public Service Commission is, so far as costs are concerned, but another name for the City.

This suit has been defended in equal parts by representatives of the State and City, and the costs should be divided accordingly. If the Attorney-General can be sued as such, costs can be awarded against him also as such. This question had better be settled—C. M. Hough, *D.J.*"

March 31, 1908.

History of Complainant.

Organization.

The complainant was organized in 1884 (claiming authority under chapter 367, Laws of 1884) as a consolidation of six theretofore existing companies:

New York Gas Light Company, incorporated 1823.
Manhattan Gas Light Company, incorporated 1830.
Metropolitan Gas Light Company, incorporated 1848.
Harlem Gas Light Company, incorporated 1855.
Municipal Gas Light Company, incorporated 1874.
Knickerbocker Gas Light Company, incorporated 1876.

These, with the New York Mutual Gas Light Company, were the only companies manufacturing and selling gas in the then City of New York. The intention had been to include the Mutual in the consolidation, but it was prevented by its charter.

Other companies subsequently became engaged in the manufacture and sale of gas in the Boroughs of Manhattan and The Bronx of the Greater City of New York, and in time the complainant secured control of them all (with the unimportant exception of The Bronx Gas and Electric Company), as well as of all the companies engaged in those boroughs in the production and sale of electric current for light, heat and power purposes, to wit:

Gas Companies.

The New York Mutual Gas Light Company, incorporated 1866.

The Standard Gas Light Company, incorporated 1886.

New Amsterdam Gas Company, incorporated 1898.

Being a consolidation of:

Equitable Gas Light Company of New York, incorporated 1882.

New York and East River Gas Company, incorporated 1898 (controlling East River Gas Company of Long Island City, incorporated 1890).

New Amsterdam Gas Company, incorporated 1897.

Central Union Gas Company, incorporated 1897.

Northern Union Gas Company, incorporated 1897.

Electric Companies.

The New York Edison Company, incorporated 1901.

Being a consolidation of:

Edison Electric Illuminating Company (which included a merger of Harlem Lighting Company and Manhattan Electric Light Company).

New York Gas and Electric Light, Heat and Power Company (which included a merger of Mount Morris Electric Company, North River Electric Light and Power Company, Borough of Manhattan Electric Company, Block Lighting and Power Company No. 1 and Manhattan Lighting Company).

The United Electric Light and Power Company, so named in 1889.

(Formerly N. Y. Safety Electric Light and Power Company, including a merger of United States Illuminating Company.)

The Brush Electric Illuminating Company, incorporated 1881.

Gas and Electric Companies.

Westchester Lighting Company.

So, in the boroughs of Manhattan and The Bronx, to which the 80 cent rate applies, the complainant has a virtual lighting monopoly.

Capitalization.

Appraisers were employed by the constituent companies to appraise their respective properties and see that each company obtained its proportionate share in the new organization. The agreed appraisal of the aggregate tangible property was (153):

Real estate	$10,332,000
Plant	12,175,000
Mains	5,217,000
Services	1,005,000
Meters	1,195,000
Office furniture and fixtures	70,000
Total capitalization of tangible property	$29,994,000

Inflation by Capitalizing "Rights, Franchises, etc."

The consolidation agreement (4280) provided for a total capitalization of $45,000,000, but this contemplated the inclusion of the New York Mutual Gas Light Company, whose charter was found to prohibit its entering the consolidation. (Later it entered through another door,—the purchase of its stock by the Consolidated.) The Mutual had been assigned a share in the $45,000,000 amounting to $5,922,000, and upon its elimination left a balance of capitalization of $39,078,000 to be apportioned among the other companies as originally intended.

Of the $45,000,000, intended capitalization, $1,500,000 was to be retained as "a working capital," which was one-thirtieth of the total intended capitalization. When the Mutual was dropped, one-thirtieth of the $39,078,000 balance, or $1,303,000, was set aside for working capital, leaving $7,781,000 of the inflation, which was ascribed to "Rights, Franchises, etc.," and was divided among the companies in the proportion that their indi-

vidual sales of gas bore to the gross amount of sales by all companies from October 14, 1882, to October 14, 1883. (Complainant's Exhibit 227, pp. 921 and 922.)

The total capitalization was :

Tangible property (as above).....	$29,994,000
Working capital.....	1,303,000
Rights, franchises, etc.....	7,781,000
Total capitalization.....	$39,078,000

Stock was immediately issued to the amount of $37,775,000, less $2,329,000 retained to retire obligations of constituent companies and $15,940 for sundry adjustments, a net amount of $35,430,060 (154). The obligations of the old companies were subsequently paid.

Inflation in Capitalizing Tangible Property.

A committee of the Senate of the State of New York of 1885-1886 ("Gilbert Committee") authorized to investigate the organization of the complainant by the consolidation of its constituent companies, caused an audit of its books to be made by Mr. Yalden, an expert accountant of high standing. He reported to the committee the cost of the properties of the constituent companies, as shown by their books, totaling $20,942,632.85. This would make a total inflation of excess over cost of tangible property and rights, franchises, etc., of upwards of $15,000,000.

Further Increases in Capital Stock and Holdings.

The capital stock was increased in April, 1900, to $54,595,200, and further increased in July, 1900, to $80,000,000 (5018, 5020). Authority for a further increase of capital stock to $100,000,000 was obtained in July, 1904. The additional shares have not been

issued, but 6 per cent. debentures have been issued and taken by the stockholders to the amount of $19,857,600, which are convertible into the company's stock at par at the option of the holder (855). The proceeds of such increases and sale of debentures have been chiefly used in the purchase of securities of the other companies mentioned; also for all the capital stock of the National Coke and Coal Company, a corporation organized for the purpose of attending to complainant's cartage and sales of coke; also for all the capital stock of the Astoria Light, Heat and Power Company, a corporation organized to construct a generating gas plant at Astoria, Long Island, which when completed is intended to take the place of the complainant's generating stations in the borough of Manhattan, whereupon the latter stations will be abandoned or "scrapped."

In addition to the securities of the Astoria company, the complainant holds securities of other companies of the following actual cost:

Brush Electric Illuminationg Company, bonds	$275,000 00
New Amsterdam Gas Company, stock and bonds	4,814,608 03
New York Edison Company, stock	15,517,200 00
New York Mutual Gas Light Company, stock	5,703,290 65
Standard Gas Light Company, stock	14,587,495 23
United Electric Light and Power Company, stock, bonds and loans	9,452,063 48
Westchester Lighting Company, stock and bonds	5,707 50
National Coke and Coal Company, stock	50,000 00
	$50,405,364 89

Increase of Tangible Property and Business.

Since 1884 the company has expended for replacements $4,663,838.32, and a corresponding amount has been written off for depreciation. There have also been added for betterments $9,431,198.52, which represents the net increase of the plant account according to the books. The actual book cost of the present plant thus appears to be $30,373,831.37, as follows:

Original cost as shown by the books of the constituent companies (Senate document 86, 47, page 776).....	$20,942,632 85
Increase since 1884, as shown by company's books (Exhibit 387).....	9,431,198 52
Book cost of present plant....	$30,373,831 37

In 1885, sales, 3,942,433,000 cubic feet of gas.

In 1905, sales, 13,283,163,767 cubic feet of gas.

(Of which 10,419,461,426 feet were produced by complainant, and 2,863,702,341 feet purchased from other companies.)

Valuations of Court and Master.

The property upon which complainant is entitled to a fair return was found and valued by the Court below and Master as follows:

	Master.	Court.	Reduction by Court.
Real estate.....	$13,461,000	$11,985,435	$1,475,565
Plants	15,500,000	15,500,000	.....
Mains	12,636,000	12,636,000	.....
Services	1,994,000	1,994,000	.....
Meters and miscellaneous.	4,100,000	4,100,000	.....

	Master.	Court.	Reduction by Court.
Working capital.....	3,616,000	1,616,000	2,000,000
National Coke & Coal Co.	50,000	.....	50,000
Astoria, i. e., capital employed in production of gas secured from other companies	12,000,000	.....	12,000,000
Total of tangible assets	$63,357,000	$47,831,435	$15,525,565
Special franchises and good will.....	20,000,000	.....	.....
Special franchises.....	.....	12,000,000	8,000,000
Total.....	$83,357,000	$59,831,435	$23,525,565

The Master found complainant's net annual income under the laws complained of would be $2,327,328, a return of 2.8 per cent. upon his valuations. The Court found an increase in the net income to $3,024,592, a return of 5.5 per cent. upon the Court's valuations, and held that a return less than 6 per cent. was confiscatory.

Specifications of the Errors Relied Upon.

The errors assigned upon which this defendant relies are as follows:

I.—That the record does not contain sufficient evidence to show that the rate of eighty cents per thousand cubic feet for gas sold in the City of New York does not afford a fair and reasonable return to the companies doing business in the said city, the evidence being limited to the valuation of property and operations of the complainant alone, and, further, that the record does not show but that the said rate would afford a fair and reasonable return upon the value of property employed in the making and distribution of gas by a company in same

territory with the complainant, well located and equipped, and economically managed, but that the case was decided on the theory that if the statutory maximum price does not afford, in the opinion of the Court, a sufficient rate of return upon the value of the property employed in its business of making and distributing gas by the complainant, the statute is void as to that company, irrespective of its effect upon other companies doing business in the same territory (481).

II.—That the record does not contain sufficient evidence to show the reasonable and necessary operating expenses of the complainant. The evidence being limited to its actual receipts and disbursements during a period from November 1, 1904, to December 31, 1905, inclusive, supplemented in part only by experience of other periods and being entirely insufficient for that purpose (482.)

III.—That the valuation of the complainant's property upon which the Court's calculation is based is an estimate of present value, arrived at by a valuation of the reproduction cost of complainant's identical plant and each part thereof, without regard to whether the same was originally economically produced or commercially and economically worth reproducing, or as to obsolescence of type and the advancement of the art. And not either upon the cost thereof, or the reproduction of a plant that would produce the same kind, quantity and quality of gas in an economically constructed modern plant (482).

IV.—That in finding the valuation (paragraphs I. and II.) of complainant's real estate actually employed in its business of manufacturing and supplying gas at $11,985,435, is erroneous, as being

(a) In excess of the original cost of such real estate to the complainant and its predecessor companies.

(*b*) In excess of the true valuation thereof, having been valued as vacant lots and not in conjunction with the buildings thereon, and for the uses and purposes to which it was devoted.

(*c*) In excess of the value at which it was carried on complainant's books (482).

V.—That the valuation (paragraph II.) of the real estate, plants, mains and services and each of them are in excess of the valuation sworn to by the officers of the complainant in the return to the State Board of Tax Commissioners for the assessment of the franchise tax and the testimony of its officers before the joint committee of the Senate and Assembly of the State of New York, and are based entirely on the complainant's testimony and its experts (482).

VI.—That in finding (paragraphs Ic. and II.) that the valuation of the intangible special franchises of the complainant is at least the sum of $12,000,000; whereas

(*a*) The complainant owns no special franchises not terminable at the will of the State of New York or of the City of New York.

(*b*) The franchises claimed by it, if owned, are not proper subjects of valuation in ascertaining the value of the property upon which it is entitled to earn a return.

(*c*) The record does not sustain the valuation (482).

VII.—That in finding (paragraph Ih.) the sum of $1,865,717.43, therein stated, represented more than a normal profit upon the volume of purchased gas, and in finding that the amount paid by complainant was paid under temporary expiring agreements, and did not include any reasonable recompense or return upon the value of the investment required to produce said gas, which findings are not supported by the record (482).

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VIII.—That in finding (paragraph Ih.) that while the total net income for the year beginning May 1, 1906, would remain the same upon the basis of the prices charged for gas during the calendar year 1905, yet if the prices for gas were reduced as provided by the statute of 1906 and by chapter 736 of the Laws of 1905 the net income of complainant for said year would be reduced to the sum of $3,024,592.45, on the ground that such finding is speculative and not supported by the record; and, in particular also

(*a*) In finding a probable increase in sales of gas tending to a reduction as aforesaid.

(*b*) In finding a probable increase in cost of gas obtained from other companies, leading to such reduction.

(*c*) In finding a probable change in the source of manufacture of some portion of such gas, leading to such reduction.

(*d*) In overlooking the decrease in "Expenses" due to the reduction in the complainant's special franchise tax, payable to the State of New York, which would result from the diminution of its net profits through reduction of its rate for gas, said special franchise tax item being included by the Court in the "Expenses" of 1905 to the amount of $406,909.23, as shown by the Master's report (483).

IX.—In failing to make an express finding as to the present existence of the franchises claimed by complainant by derivation from the following corporations, respectively (such failure in the case of each of such companies being separately assigned for error), whereas the Court should have found that as to each of said franchises the complainant is no more than a holdover occupant, whose right of occupancy is terminable at the will of the State of New York or of The City of New York.

OPY

(*a*) The New York Gas Light Company.

(*b*) The Manhattan Gas Light Company.

(*c*) The Municipal Gas Light Company; and this alleged franchise was at all times invalid on account of lack of authority in the Mayor, Comptroller and Commissioner of Public Works to grant it.

(*d*) The Metropolitan Gas Light Company (483).

X.—In finding (paragraph I.) that the following franchises claimed by complainant exist and are owned by it and are sufficient to meet all its requirements (such finding in the case of each of such companies being separately assigned for error), whereas,

(*a*) The alleged franchise claimed by derivation from the Anthracite Gas Lighting and Heating Company through the Knickerbocker Gas Light Company was invalid on account of lack of authority in the Board of Aldermen to grant it, and the alleged assignment thereof to the Union Gas Light Company was also invalid for lack of authority to assign it, and said alleged franchise in any case expires on September 17, 1913.

(*b*) The franchise claimed by derivation from the so-called State Grant through the Knickerbocker Gas Light Company was not assignable to, and did not even purport to be assigned to, complainant or either of its alleged predecessor corporations, and said franchise did not even cover any part of The City of New York, Borough of Manhattan, south of Seventy-ninth street.

(*c*) The franchise claimed by derivation from the Harlem Gas Light Company expired February 1, 1905, and as to that franchise complainant is but a holdover occupant, whose right of occupancy is terminable at the will of the State of New York or The City of New York, and said franchise did not cover any part of The City of

POOR C

New York, Borough of Manhattan, south of Seventy-ninth street.

XI.—In finding (paragraph II.) the total value of complainant's tangible assets employed in its business of manufacturing and supplying gas to be $47,831,435 and of its total property so employed to be $59,831,435.

XII.—In finding (paragraph III.) that the lowest rate of return which can be considered legislatively fair, just or reasonable, upon the value of the property employed by complainant in the business of manufacturing and supplying gas, is six per cent. (484).

XIII.—In finding (paragraph III.) that the net annual income which the complainant can earn upon the property employed in its gas business as aforesaid is less than six per cent. (484).

XIV.—That in finding (paragraph VI.) that the statute of 1906 is void because in contravention of the Fourteenth Amendment to the Constitution of the United States, in that it takes the complainant's property without due process of law and without just compensation, and deny to the complainant the equal protection of the law (484).

POINTS.

I.

The evidence fails to show that it was impossible for the Legislature fair-mindedly to come to the results reached.

> "In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It

is enough if we cannot say that it was impossible for a fair minded Board to come to the result which was reached."

San Diego Land Co. *vs.* Jasper, 189 U. S., 439, 441, 442.

We believe that the errors of the Court below are manifest and that this Court will find no difficulty in applying the foregoing rule without the necessity of an examination of all the voluminous evidence.

We wish to show, briefly, the situation as it was presented to the Legislature.

Investigations Prior to Legislation.

The legislative acts and Commission's order complained of were designed to remedy a condition causing widespread complaint by the inhabitants of the City of New York as to the quality, pressure and price of gas being furnished them, and were not formulated until after long and complete investigations, at which the complainant was represented by counsel and produced evidence. The statutes and Commission's order were based upon information derived from examination of complainant's books and the testimony of its officers.

There were three separate investigations pursuant to legislative authority:

1. By a Committee of the State Senate appointed by resolution adopted May 15, 1885, called the "Gilbert Committee," from its Chairman.

2. By a Joint Committee of the State Senate and Assembly, appointed pursuant to joint resolution adopted March 16, 1905, called the "Stevens Committee," from its Chairman.

3. By the State Commission of Gas and Electricity in 1905-06.

"Gilbert Committee."

The Gilbert Committee employed the expert Mr. Yalden, who examined the books and evidence was offered upon behalf of the Company.

It appears from the evidence taken by this committee that the cost of the properties of the constituent companies as shown by their books, exclusive of franchises, was $20,942,632.85, as follows:

Cost of Property.

Manhattan	$4,872,999 49
New York	4,630,642 03
Metropolitan	5,292,175 35
Municipal	4,092,347 86
Knickerbocker	810,481 15
Harlem	1,243,986 97
	$20,942,632 85

But evidence was offered on behalf of the company to the effect that the fair cost of the real estate and plant necessary to produce and deliver gas in The City of New York was about $1,000,000 for every million of feet produced and distributed daily. Upon this basis, the majority of the committee concluded that a valuation of $29,994,300 was not too high. The majority report upon this point was as follows:

The question for your committee to examine was: Was this capitalization thus obtained more than the fair aggregate value of the property, franchises and rights of the constituent companies at the time of the consolidation. The street mains, valves, meters, services, plant, office building, office furniture, laboratories appear to have been appraised at the value of what it would cost to reproduce them at the time of the consolidation, and

there is no evidence that any of these items were appraised too high except the evidence of the expert, Mr. Yalden, who finds that they were valued higher than they appear to have been charged as costing in the company's books. As to the value of the real estate, bulkheads, piers and water rights, there is a conflict of testimony. It is a difficult question to determine, owing to the various opinions of real estate dealers. It appears from the evidence given by the three presidents of the Equitable, Consolidated and Mutual companies that it costs for real estate and everything necessary for a capacity to produce and deliver gas in The City of New York about $1,000,000 for every million of feet produced and distributed daily.

'The Consolidated Gas Company can now produce and deliver 28,000,000 cubic feet daily, and having a large amount of plant not now in use by the additional expense of $1,000,000 it can produce and deliver thirty-three million feet per day. If the above basis is a correct one then the aggregate value of the real estate and plants of the several companies given at $29,994,000 is not too high'

(Senate Document (86) No. 47, page lxxvi).

From this conclusion Senator John I. Gilbert dissented vigorously, saying, after an examination of the evidence in detail:

'Thus, it is indisputable that upon the evidence the fair capital of the combined constituent companies, having regard to their actual and prospective capacities and present output of gas, should stand at less than twenty millions of dollars.' (*Ibid.*, page 48.)

To the valuation of $29,994,000 covering tangible properties there was added $7,781,000 for franchises and rights. As to this addition, the majority of the Committee said:

'There certainly seems to be a great injustice to the people in permitting the value of the franchise conferred by the State to form a basis of capitalization for the purpose of organization as a corporation and that the consumers of gas should be required to pay such a price for it as would pay a dividend upon the value of these franchises which are a gift to the people. But it is a fact that the Laws of 1884, under which these companies consolidated, expressly authorized this to be done. * * * Thus the question for your committee to decidewas this: Was $7,781,000 more than the fair aggregate value of the franchises and rights of these six companies? We are forced to the conclusion that it was not; that the franchises of the New York, Manhattan, Metropolitan and Municipal were worth more than that sum, and if these companies saw fit to give a part of the value of their franchises to the stockholders of the Harlem and Knickerbocker, it was matter that interested only the stockholders of those companies (*Ibid.* (77) LXXIX.).

"As to this Senator Gilbert, in his dissenting opinion, said:

"'One fictitious item of $7,781,000.

"'With no limitation by law on the price of gas, or regulation as to its quality or measurement, the effect of adding arbitrarily $7,781,000, the last scheduled item, to the capitalization of six companies already capitalized excessively for the business they are conducting, is to tax gas consumers for an unrestricted profit on an apparent investment of $7,781,000, when in honest truth that $7,781,000 does not represent one dollar.

"'Seven per cent. on this sum is over half a million dollars per annum. More than four times that amount has already been distributed as dividends and collected by the consolidation from the gas-paying public of New York.

"'This item alone of $7,781,000 is a significant badge. The public wrongs its approval would perpetuate justifies the Legislature in disintegrating the transaction of which it is an essential element (*Ibid.*, page 406).'"

"Stevens Committee."

The Joint Committee appointed pursuant to a joint resolution of March 16, 1905, immediately proceeded to investigate as directed and reported to the Senate and Assembly on April 29, 1905. (Report 66-135.)

The history of the gas companies was reviewed, schedules of properties, values, expenditures, costs, etc., were presented and the committee's conclusions and recommendations were submitted, in part as follows:

Conclusions.

Prices of gas, pressure and quality:

From the evidence which has been presented we are satisfied that a price of seventy-five cents per thousand cubic feet will be fair to the consumer and will afford the companies, after allowing the proper costs for manufacture and distribution, taking into consideration all the elements of such cost, a reasonable return upon their capital investment in their gas-making business. This applies to the Borough of Manhattan, the Borough of Brooklyn and a large part of the Borough of The Bronx. In our opinion it would not be just to make such a rate applicable to the more sparsely settled sections of the City of New York, in which, owing to local conditions, the cost of manufacture and distribution is necessarily higher.

The investigation has shown clearly that by increasing the pressure a quality of gas poorer than the standard required by law may be made to fur-

nish the required degree of illumination, thus entailing an increased consumption at an increased cost to the consumer. In order that the consumer may benefit by the reduction of the price of gas, it is important that the degree of pressure should be effectively regulated. The evidence has also shown that there is at present no official inspection in any Borough of the City except Manhattan, and that the inspection in the last named Borough is too infrequent to be adequate. Provision should be made for a system of inspection insuring a supply of pure gas in accordance with the legal standard and its accurate measurements at the meter. This inspection should be made by officials of the City at the City's expense.

* * * * * * * * * * *

Franchises.

As had been noted, serious questions are presented to the extent to which the companies are entitled to use the streets of the City. This is a matter peculiarly within the control of the City authorities, and the validity of the franchises that are claimed is a subject for judicial determination. No action by the Legislature is recommended, as the laws already in force, if properly invoked by the local authorities, are adequate to meet the demands of the situation.

Supervision of Public Service Corporations.

It is manifest that the conditions disclosed by the testimony make it necessary that the operations of the companies supplying gas and electricity, as well as those engaged in other public service, should be the subject of constant and effective supervision by a body paid by the State and clothed with power to execute its orders, subject to suitable review by

the courts upon appeal. The gross abuse of legal privilege in over-capitalization and in the manipulation of securities, for the purpose of unifying control and eliminating all possible competition, shows clearly that there can be no effective remedy by general legislation or through ordinary legal proceedings, and that for the protection of the public there should be created a commission with inquisitorial authority, competent to make summary investigations of corporations, to supervise issues of securities and investment in the stocks or bonds of other companies, to regulate rates and secure adequate inspection, and otherwise to enforce the provisions of law. The history of the subway companies affords an apt illustration of the futility of carefully phrased contracts executed in pursuance of express legislation in the absence of an effective scheme for regulation. The failure of general provisions prohibiting the consolidation of corporations is conspicuously shown by the manner in which the provisions of the charter of the New York Mutual Gas Light Company and the Act of 1886 regarding the Standard Gas Light Company has been evaded. The investment of millions in securities earning no dividends and intrinsically worthless solely for the purpose of securing monopoly control points to the necessity of strict supervision in this regard. The plan of providing a commission paid by the State and invested with ample power has worked most satisfactorily in other States, and there is every reason to believe that a similar plan put in operation here will prevent a recurrence of the mischiefs revealed in this investigation.

Specific Recommendations.

We therefore recommend—

(1) That the price of gas sold in the Boroughs of Manhattan and Brooklyn and in that part of the

Borough of The Bronx west of the Bronx River should be fixed at a maximum of seventy-five cents per thousand cubic feet.

(2) That the pressure of gas in any of the street mains should not be permitted to exceed 2½ inches or to be less than 1 inch.

(3) That the standard of purity and of illuminating power of gas be fixed.

(4) That a proper system of inspection be provided to secure the enforcement of the law with reference to pressure, purity, illuminating power and accurate measurement of gas delivered. * * *

Bills to carry out these recommendations will be presented.

Respectfully submitted,

FREDERICK C. STEVENS,
Chairman.
ALFRED R. PAGE,
JAMES K. APGAR,
GEORGE B. AGNEW,
EDWIN A. MERRITT, JR.,
Committee.

At the same session the Legislature enacted chapter 736, fixing the maximum price of gas to the municipality of New York at seventy-five cents per one thousand cubic feet, and chapter 737, establishing a Commission of Gas and Electricity, both becoming laws June 3, 1905.

Investigation, Order and Opinion of the Commission of Gas and Electricity.

The Commission of Gas and Electricity, appointed pursuant to chapter 737, Laws of 1905, having been complained to in writing by not less than one hundred customers or purchasers of gas, as provided by the statute,

held public hearings and took testimony, upon notice to and attended by counsel for complainant. The result was the order complained of (28), made on February 23, 1906, in part as follows:

> "And the said Commission having investigated as to the cause for such complaints, and inspected the works, system, plants and methods used by said Consolidated Gas Company in manufacturing and distributing such gas, and having examined the books and papers of said company pertaining thereto; and, pursuant to a further notice duly served upon the said Consolidated Gas Company of New York, the Commission at said hearing having inquired into, examined and investigated the illuminating power, purity and pressure of gas supplied by said company, and having examined the methods employed by it in the transaction of its business and inquired into the methods and means employed in manufacturing, distributing and supplying gas for light, heat and power; now, after such hearings and upon such investigations and upon the evidence and argument of counsel, and due deliberation having been had, it is
>
> Ordered, That on and after the first day of May, 1906, the maximum price of gas which shall be charged by the Consolidated Gas Company of New York, in the Borough of Manhattan, City of New York, State of New York, be and is hereby fixed at eighty cents per thousand cubic feet; and it is further
>
> Ordered, That the gas furnished, sold and delivered by the Consolidated Gas Company of New York shall have an illuminating power of not less than twenty-two sperm candles of six to a pound, burning at the rate of one hundred and twenty grains of spermaceit per hour, tested at a distance

of not less than one mile from the distributing holder by a burner consuming five cubic feet of gas per hour, as is now provided by law. * * *

As the gas supplied to all customers of the Consolidated Gas Company is delivered through the same service mains as gas supplied to The City of New York, and as the pressure of gas so supplied is fixed by law at not less than one inch nor more than two and one-half inches in any service mains in said city at any distance from the place of manufacture, said law fixes the pressure of gas at which all customers and consumers of the company must be furnished in said city—Frederick E. Gunnison, John C. Davies, Lucian L. Shedden, Commission of Gas and Electricity of the State of New York."

The opinion of the Commission (31) shows the extent of this investigation. It is in part:

"The Consolidated Company is the largest company operating in New York and on October 31, 1905, had issued an outstanding $80,000,000 capital stock, and bonds and convertible debentures amounting to $21,245,000. During the nominal year ending October 31, 1905, it sold to consumers 13,037,164,550 cubic feet gas; street lamp use, 271,199,223 cubic feet gas; total, 13,308,363,773 cubic feet gas.

"The company received an income from consumers, $13,012,206.09; street lamps, $559,823.11; total, $13,572,029.20.

"The cost of manufacturing and distributing the gas sold to consumers amounts to $7,920,077.46, or 60.75 cents per thousand cubic feet, not including fixed charges of the company amounting to $936,883.24. This cost per thousand cubic feet includes not only the actual repairs and replacements for the

year ending October 31, 1905, but an additional sum sufficient to bring the expenditures for repairs and replacements to the average expenditure by the company for twenty years for these items.

"Upon the hearing the Consolidated Gas Company produced its contracts for the purchase of oil, coal and other materials used in the manufacture of gas, and also its contracts for the sale of its residuals.

"On the 1st day of July, 1905, a law passed by the Legislature of 1905 went into effect, which compelled the Consolidated Gas Company to furnish gas of an illuminating power of twenty-two candles, which was an increase of two candle-power over that formerly prescribed by law.

"The nominal year ending October 31, 1905, included four months only of operation under the higher candle-power requirement. As these months were during the warmer weather, when the cost of enrichment is least, the Commission found that 1.81 cents per thousand cubic feet should be added to the actual cost of gas as found for the nominal year to obtain the cost of manufacturing and distributing gas of twenty-two candle-power for twelve months.

"The value of the property of the Consolidated Gas Company actually employed in the manufacture and distribution of gas on October 31, 1905, did not exceed the sum of $30,000,000.

"Evidence taken before the Committee appointed by Senate by resolution adopted May 15, 1885, was introduced, showing the cost of the properties of the constituent companies, exclusive of franchises, as appeared on their books, to be in 1884, $20,942,-632.88. The net additions for construction from 1884 to October 31, 1905, amounted to $9,693,-

565.90. To this should be added value of materials on hand October 31, 1905, $616,470.08, making a total of $31,252,668.83.

"Recently property at Eighteenth street, formerly used as a coal gas manufacturing plant by the Consoildated Gas Company, was condemned by the City of New York, and while an award has not yet been made by the Commissioners appointed to condemn said property, title has passed to the City and the amount of the award, when made, will carry interest at the rate of six per cent. from the date the City took title. The value of the property so taken is not actually used by the Consolidated Gas Company in the manufacture and distribution of gas. The value of said property, as testified to by the Consolidated Gas Company on the condemnation proceedings, was $2,655,000.

"The Commission also had before it the return of the Consolidated Gas Company made to the State Board of Tax Commissioners for the purpose of taxation, which return was duly verified. The value of the property of the company, as shown by the return to the State Tax Commissioners June 30, 1905, exclusive of franchise, allowing for depreciation of the real estate, plant, mains, services and material and also meters, supplies and other personal property, was $27,408,700.91. It was contended by the company that the amount so returned to the State Board of Tax Commissioners did not represent the true value. But all of this testimony, with other pertinent evidence, was considered by the Commission in arriving at the value of the property of the Consolidated Gas Company actually used in the manufacture and distribution of gas.

"In allowing a fair return upon the value of the property actually employed in the gas making busi-

ness, account has been taken of the nature and hazard of the business and of the return allowed on similar investments.

"The Commission thinks that 8 per cent. is a reasonable return upon the actual value of the property owned by the company and used in the manufacture and distribution of gas. It will be remembered that this return is not based upon the capitalization of the company, but upon the actual capital engaged in the manufacture and distribution of gas.

"It was strenuously urged before the Commission on behalf of the company that the Commission should allow the capitalization of the company's franchise as it was assessed by the State Board of Tax Commissioners at $7,781,000. And upon this the company paid a yearly tax, which entitled the company as a matter of law to such capitalization. On the evidence before the Commission it is questionable whether the Consolidated Gas Company has franchises of any considerable value. The Commission believes that these franchises, granted by the people without compensation, should not be capitalized against the public, thereby compelling the public to pay a profit upon the value of the favor granted by it. The seeming injustice of requiring a corporation to pay taxes upon a franchise and at the same time refusing to allow the capitalization of that franchise is sophistical, not real. The franchise tax is paid by the corporation, but charged against the public as an expense of operation, and in reality is therefore paid by the consumer, not by the company.

"The Astoria Light, Heat and Power Company is building a plant at Astoria, Long Island, and proposes building a tunnel under the East River,

connecting its works with the distributing system of the Consolidated Gas Company in Manhattan. The Consolidated Gas Company is the owner of all the capital stock of the Astoria Company. Large expenditures have already been made in the construction of its first unit, which unit will have a total capacity of 20,000,000 cubic feet per day, while the plant when completed will eventually produce an amount of gas equivalent to that now sold by the Consolidated Gas Company on the Island of Manhattan, including that purchased from other companies by it. Considerable evidence was taken in reference to the Astoria plant and the proposed removal of the Consolidated manufacturing plant thereto. The company claims that such removal from the Island of Manhattan is made in obedience to a public demand therefor. In any event the Commission believes that the prospective economies in the cost of manufacture and the increase in the sale of gas by reason of the reduction in price will enable the company to pay a reasonable return on any necessary investment in Astoria.

"This conclusion was arrived at by the Commission after a most exhaustive and painstaking hearing and investigation covering a period of nearly three months, in the course of which the plants of the company were examined and over 5,000 pages of testimony taken. * * *

"The Commission believes that the natural increase in gas sales will be greatly stimulated by the reduction in price, and is satisfied that the price fixed is fair to the consumer, the public and the company."

Then followed chapter 125, Laws of 1906 (became a law April 3, 1906), fixing the maximum price in the Borough of Manhattan at 80 cents.

II.

The legislative acts were [illegible] upon evidence presented by complainant.

The Legislature had before it the complete history of complainant and the value of its property as shown by its books and by the oaths of its officers.

Upon those values the legislative acts were based.

Could a fair-minded board rely upon complainant's books and the oaths of complainant's officers?

And in addition the witnesses for the State and the City before the Master sustained the values upon which the Legislature acted.

Valuations in complainant's reports to State Board of Tax Commissioners.

Section 43 of the Tax Law (chap. 712, Laws 1899) provides that any person or corporation subject to taxation shall make a written report to the State Board of Tax Commissioners, containing a full description of any special franchise possessed or enjoyed by such person or corporation, "together with any other information relating to the value of such special franchise required by said board. The State Board of Tax Commissioners may from time to time require a further or supplemental report from any such person * * * or corporation, containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation * * * making the same to the effect that the statements contained therein are true." The act further provides that the State Board of Tax Commissioners shall prepare and furnish a blank form for the report.

Pursuant to this act the complainant, by its Secretary, Robert A. Carter, on the forms prescribed by the State Board Tax Commissioners, made and filed in the [illegible] December, 1904 and 1905, the report for the [illegible]ding June 30th in each year respectively (State's Exhibits C and D, Exhibits, pp. 5053, 5064).

Schedule D sets forth in detail the assets and liabilities of the company, in which it stated the value of the property used by it in the manufacture and distribution of gas as follows:

COMPARATIVE STATEMENT OF PROPERTY.

Values as per reports to State Tax Commissioners, 1904, 1905.

	June 30, 1904.	June 30, 1905.
Real estate and plant.	$19,673,075 42	$19,678,612 76
Mains and services..	4,261,156 39	4,398,160 82
Contracts, rights, etc.	7,781,000 00	7,781,000 00
Meters, stoves and other personal property.....	2,667,329 77	2,736,516 90
Materials and supplies.....	697,014 92	595,410 39
	$35,079,576 50	$35,189,700 00

Schedule K in these reports is headed "Statement of cost to reproduce new property in streets, highways, etc., value less depreciation and same outside, with assessment in each tax district," and is as follows:

	Present value of property in streets, highways and public places, on basis of cost of reproduction (new).	Present value of property in streets, highways and public places (allowing depreciation).	Present value of property outside streets, highways and public places, on basis of cost of reproduction (new).
1904,	$5,613,221.12	$4,261,156.39	*$89,310,586.54
1905,	5,801,466.10	4,398,160.82	*106,065,283.38

* The details of this item appear in Schedule D.

Thus showing that the valuation of all the property of the complainant used in its gas making and distributing business was given on a basis of cost of reproduction (new).

These reports were verified as follows:

State of New York, }
County of New York, } ss.:

R. A. Carter, Secretary of the Consolidated Gas Company of New York, being duly sworn, deposes and says that the foregoing statements have been compiled from the books of the company, and after a careful examination of the same he declares them to be *a true, full and correct statement of the property of said company and the value thereof* at the close of the year ending June 30, 1904 (5), as well as of its financial condition and affairs on said date, to the best of my knowledge and belief.

R. A. Carter.

Sworn to before me this
day of November,
(seal.) Wallace Young,
Notary Public No. 5,
Kings County.

Certificate filed in New York County.

Deducting $7,781,000 for contracts, rights, etc., leaves a sworn valuation for the tangible property:

June 30, 1904.....	$27,298,576 50
June 30, 1905.....	27,408,700 00

Before the Legislative Investigating Committee of 1905 (Stevens Committee), Mr. Carter again swore to the truth of these valuations.

He testified as follows (859-61):

"Q. Will you please take the item in that report, the first item of real estate and plant, $19,673,-

075.42; now, that is a statement of the value of the real estate and plant of the Consolidated Gas Company to June 30, 1904, is it not?

"A. That is exactly what it is.

"Q. That is exactly what it is?

"A. As near as we could determine.

"Q. That is what I am asking you.

"A. That was the value of the property at that time.

"Q. That's it exactly; in other words, when you came to make up the report to the State Commissioners for the year ending June 30, 1904, you sought to ascertain fairly what the value of the property of the company was?

"A. Precisely.

"Q. And you took the various properties of the companies with which you were familiar and you fixed what you decided to be the fair value of the properties and stated these values in your report?

"A. Precisely.

"Q. And under the head of real estate and plant you put down the figures $19,673,075.42 as the value of the real estate and plant of the company?

"A. Yes, sir.

"Q. Before you get to that as suggested, is that the value that was arrived at after consideration of the matter by others besides yourself?

"A. That is the case, Mr. Hughes.

"Q. And with whom did you advise in making the determination of value?

"A. The engineers of the company.

"Q. Who were they?

"A. Mr. Bradley and Mr. Woods.

"Q. And who else?

"A. The Assistant Secretary, who has charge of the distributing system of the company.

"Q. Who was that?

"A. Mr. Simpson, Mr. C. C. Simpson.

"Q. Anybody else?

"A. I think if we were in doubt I would have consulted with the President from time to time with regard to the figures that went into these reports.

"Q. Yes, sir, and probably with other counsel?

"A. Probably—always—always with counsel; reports are always submitted to counsel and fully approved before being filed.

"Q. You sought in this way to get from all persons connected with the company who had expert information as to the value of the property what would be a proper valuation thereof on that day?

"A. Yes, sir.

"*Q.* And the amounts which are stated in this Schedule D, that you have before you, and that report of 1904, were those arrived at as stated?

"*A.* Yes, sir.

"*Q.* And with the concurrent judgment of these various men familiar with the facts?

"*A.* Yes, sir.

"*Q.* Taking then the first item of real estate and plant, $19,673,075.42, and taking that as the value thus arrived at of the real estate and plant, state whether or not that covered all the real estate and plant of the company; that is to say, the land, the buildings thereon, and stoves, the holders and various apparatus which are connected with your business of gas making and apart from the items which are separately mentioned later on, such as mains and services and meters, stoves and personal property?

"*A.* That is correct (pages 859-861).

"*Q.* Then the amount that you have read of real estate plant which were carried in the books at $26,762,591.09 appear in the balance sheet of June 30, 1904, at that total, you decided were of the fair value of $19,663,075.42?

"*A.* Yes, sir (page 1008).

"*Q.* Will you give the total of those mains and services, please?

"*A.* $8,799,740.69.

"*Q.* And then mains and services which appeared in the balance sheet of June 30, 1904, at the book value of $8,799,740, you decided to be of the actual value of $4,261,159.39, and so entered them under the heading, 'Mains and Services,' in the report to the State Board of Tax Commissioners?

"*A.* Based upon the cost of reproduction, less depreciation.

"*Q.* Whatever it was based upon, you entered it as actual value?

"*A.* Yes, sir.

"*Q.* Of those mains and services?

"*A.* Yes, sir.

"*Q.* And as you stated a moment ago, in another part of your report, you set forth the extent in feet of the pipes of your company, which appears in the separate schedule verified by you under date of November 30, 1904, annexed to said report, in which the total feet are given as 4,605,681?

"*A.* Yes, sir.

"*Q.* And you would state the present value reproduced new would be $5,613,221.12, and the present value, allowing depreciation, was $4,261,156.39?

"*A.* Yes, sir.

"*Q.* In other words, you decided after your conference with the parties who were acquainted with the facts, with your own experience and knowledge of the facts, that it would cost on June 30, 1904, to reproduce new the mains and services of the company the sum of $4,261,156.39?

"*A.* That was the estimate; yes, sir (page 1009)."

In this case the company has made its statement, under the oath of one of its principal officers as to the actual present value of its property, and who has again testified that the valuation was the fair value of the property of the company at that time, arrived at after consultation with the engineers of the company, assistant secretary in charge of the distributing system, the president and counsel of the company, with all persons connected with the company who had expert information as to the value of the property, and that the amounts which are stated in Schedule D were those arrived at, with the concurrent judgment of these various men familiar with the facts.

This report was not for the purpose of fixing an assessment value on the complainant's tangible property but for the purpose of assessing the value of its franchises or intangible property.

The value of a franchise is based on the earning capacity of the plant over and above a fair return on the value of the tangible property. Therefore, it was not in the interest of the complainant to undervalue its tangible property, for the less amount of value assigned to tangible property the greater the return upon the intangible property, the larger the valuation of the franchises, and hence the greater tax.

In this case the complainants tried to overcome the effect of the testimony of Carter, given before the legislative committee. Mr. Carter testified (pp. 1239-1247) that after he had testified before the joint legislative investigating committee he had a talk with Mr. Bradley and that thereby his recollection was refreshed. That in preparing the statement for the State Tax Commissioners he had estimated the property at what it would sell for to some one who did not want to carry on the gas business, and also that they had in contemplation the removing of the manufacturing plant to Astoria, and

therefore that they took half the book value of the plant and added something to it as salvage. That in making up the value of mains and services they took off 25 per cent. of the book value because "the company was constantly replacing its mains and its services with mains and services of a larger size, at a considerable loss. The value of the mains or services taken out of the ground or abandoned, as the case might be, being a total loss practically." On the meters, stoves and other personal property about 25 per cent. was taken off "the amount represents a portion of the book value of that property that was written off to reduce it to such an amount as that would probably realize from the sale of that property under ordinary circumstances * * *. I do not mean that it was written off the books, but in making up the figures for the tax report." (Complainant's Exhibit 223 was then put in evidence, from which the following extract is taken:

Complainant's Exhibit 223.

(Exhibits, p. 5276.)

CONSOLIDATED GAS CO. OF N. Y.

June 30, 1904.

	Investment as Shown by Ledger Accounts.	Values Stated in Franchise Tax Reports.	Difference.
Real estate	*$11,216,479 71	$11,216,479 71	.....
Plant	*15,755,462 88	8,456,595 71	$7,298,867 17
Mains	†7,571,808 83	3,666,531 38	3,905,277 45
Services	†1,227,931 86	594,625 01	633,306 85
Franchise and rights	7,781,000 00	7,781,000 00	.....
Stocks of other companies	46,674,034 27	46,674,034 27	.....
Bonds and obligations of other companies	8,686,744 70	8,686,744 70	.....
Material and supplies	697,014 92	697,014 92	.....
Accounts and bills receivable	1,944,968 09	1,944,968 09	.....
Cash on hand	1,146,866 87	1,146,866 87	.....
Unclaimed dividends	39,052 50	39,052 50	.....
Metropolitan redemption fund	500 00	500 00	.....
Meters, stoves and other personal property	3,630,772 12	2,667,329 77	963,442 35
Totals	$106,372,636 75	$93,571,742 93	$12,800,892 82

* Stated as a single item at $19,673,075.42 in Schedule "D" (volume 2 of Exhibits, page 751).

† Stated in the Tax Report under the heading "Present value allowing for depreciation." "Reproduction" value stated as $5,613,221.12 for mains and services.

Detail not asked for and not given in Tax Report to State Board:

For mains	$4,829,925 82
For services	783,295 30
Total	$5,613,221 12

Mr. Simpson, assistant secretary of the company in charge of distributing system, testified with respect to the data furnished to Mr. Carter for the preparation of the 1904 report, as follows: "Mr. Carter came to my office and told me that he had to report to the Tax Commission the value of our mains and services, and asked me to give him some figures as to the value" (pp. 678-679). "I did not give him any statement of values on which to base his calculations. I gave him a price per foot for each size of main, and he from his own books took the mileage of mains and multiplied the number of feet by the price per foot, and made his calculations fr[om] that" (pp. 679-680). "He had charge of the books of the company and he had the number of feet in his possession" (pp. 679-680). "I have a set of figures as to the number of feet of mains in use, and the company or the general bookkeeper of the company has a set of figures" (p. 683). "I am not familiar with the totals, as they appear in the Tax Reports, for I have never seen them" (pp. 678-679). And further, "I took the mileage of the various sizes of mains we had at that time, and computed the total amount, taking the cost of laying each size of pipe under the most favorable conditions. I did it for taxation purposes, and I thought those were the right kind of conditions to take. Q. Did you, in your unit figures, include anything but the bare cost of material and the labor for laying in soft dirt streets? A. No, sir, I did not" (pp. 719-720). (See also pages 1753-1756.)

W. H. Bradley, engineer for complainant, testified as follows (pp. 1701-1702):

> "Q. Mr. Bradley, it has been shown in evidence that by the reports of the company filed with the local tax assessors or with the State Board of Tax Assessors, the plant and real estate of the company had been inserted at something like $19,000,000 for several years past, which it is testified is made up of the land or real estate at the book value, and the

figure for the plant of the company, amounting in 1904 to $8,456,595.71, whereas the book was $15,775,462.88, or nearly twice as much; do you remember any conversation with Mr. Carter in the year 1902 in reference to the basis of placing the value of the plant for the purpose of the tax report?

"*A.* Mr. Carter applied to me for a figure, and I took advice with our general counsel on the subject and was informed as to what the law was in the case; acting upon that advice, I simply cut the book value in half, and added to that—the absolute figure I cannot give you; I have not got them—I added to that, if my recollection serves me, between $600,000 and $700,000 as the scrap value of the plants to be dismantled, understanding that we were going on with our Astoria business and that within a very short time practically the works would be dismantled and simply scrapped, as we had no market for them; the resulting figure from that, half of the book value and the six or seven hundred thousand dollars that I added, was the figure that Mr. Carter used in the tax report."

He further stated:

"I went into no detailed valuation, because I assumed that the book value was very nearly, if not practically correct.

"I assumed that one-half of the plant would remain in New York long enough to be subject to the payment of taxes; the other half would be simply thrown away; I took the scrap value of the other half, which would be a few hundred thousand dollars; this scrap value, plus one-half the full value, equalled the figure that I gave Mr. Carter at that time; the advice that counsel gave me was that the assessors were instructed that the value of the plant was the value of the land; that there was nothing to be added to the value of the land except such im-

provements as were valuable to the land, and the plant added no value to the land; if it was a detriment to the land it was not to be assessed" (pp. 1702-1703).

"I am willing to stand by the statements that I made before the Gas Commission and that I have made here, that I took half the book value, about $15,000,000, and added to that between $600,000 and $700,000 for the figure that I gave to Mr. Carter.

"We were then (in 1902) intending to remove the plant to Astoria; I understood that the figures I prepared for Mr. Carter were to be submitted by him to the State Board of Tax Commissioners to assist them in arriving at some tax for that year; the plans of the Astoria plant were then pretty well drawn, but little physical work had been done; I did not anticipate that we would be able to remove the plant during that year, or in any particular year" (pp. 1717-1718).

"When I had arrived at this valuation I felt that I had valued the plant of the company for taxation purposes" (p. 1721).

The reports of complainant to the State Board of Tax Commissioners, in 1904 and 1905, were for the purpose of special franchise tax assessments. It was to the interest of complainant then to value its tangible property proportionately high in order that the franchise values might appear to be less. Under these specially favorable conditions the oaths of complainant's officers ought to be credible, but the Master thus comments upon the increased valuations sworn to before him:

"It is a matter of common knowledge that reports, petitions and similar papers required in connection with matters of taxation are, in the case of

large corporations, ordinarily prepared by counsel. To some extent they are in the nature of pleadings, and are so drawn as to support the theory on which it is hoped to secure the most favorable results either before the tax officials or the courts.

"Under these circumstances, when, as in the present case, it appears that taxes are being constantly contested, it must very commonly occur that views are expressed on behalf of the corporation more or less inconsistent with the valuations it would put upon its property for purposes of sale, condemnation or such an action as the present."

A comparison of the valuations by the witnesses for the State and City, (as reported by the Master), the 1905 tax report valuations, and the Courts' valuations is as follows:

	Witnesses for State.	Witnesses for City.	1905 Tax Report.	1905 Court.
Real estate	$10,504,355 95	$10,587,685 00		$11,985,435 00
Plant	9,318,692 00	9,348,692 00	$19,678,612 76	15,500,000 00
Mains and services	7,383,533 00	7,751,263 00	4,398,160 82	12,636,000 00 1,994,000 00
Meters and miscellaneous property	3,802,544 00	3,261,687 00	2,736,516 90	4,100,000 00
Materials and supplies	.....	.....	595,410 39	.....
	$31,009,124 95	$30,949,327 00	$27,408,700 87	$46,215,435 00
Contracts, rights, etc.			7,781,000 00	12,000,000 00
Working capital			.....	1,616,000 00
			$35,189,700 87	$59,831,435 00

III.

The legislative acts were invalidated by improper methods of valuation, involving property not entitled to a return, gross overvaluations and duplications.

FRANCHISE AND GOOD WILL.

An important question here is presented, whether the franchise and good-will of a public service are property upon which the owner is entitled to a return in a rate regulated by the State.

The Master valued the franchises and good-will of complainant at $20,000,000. The Court reduced the amount to $12,000,000 and assigned it to franchises alone, and included it in the determination of the property upon which complainant is entitled to a return.

Complainant claims by analogy to the decisions that franchises and good-will are property and proper subjects of valuation in condemnation cases.

Appellant contends there is no analogy in this respect between rate regulation and condemnation cases, and that the item should have been excluded, for the reasons:

1. Franchises and good-will are not property upon which the complainant is entitled to a return in its rates.

2. The franchises claimed by complainant amount only to a tenancy by sufferance or from year to year, and, therefore, only have a nominal value for any purpose.

Judge Lacombe, in his opinion upon granting the temporary injunction ( ) substantially ordered the Master to find large values for franchises and good-will, before

any evidence was taken or the cause at issue or the Master appointed. When the evidence was submitted and defendants assumed the question to be open for argument, the Master said ( ):

> "The question is not open for discussion, however, as it is fully disposed of for the purposes of this report by the expressions of the Court in deciding the question for preliminary injunction in this cause."
>
> Citing Judge Lacombe's opinion, reported in Consolidated Gas Company *vs.* Mayer, 146 Fed. Rep., 150, 157.

The Master's report treated the subjects of franchises and good-will separately (186-211), but he confessed his inability to differentiate their values. He said (210):

> "It is clear that a new company, in addition to a substantial outlay for its franchises under existing laws (Greater New York Charter of 1897, as amended by Laws of 1901, chap. 466, and Laws of 1905, Chap. 629, sections 73-74) would be subjected to enormous expense before it could perfect its organization as to supplant a powerful competitor already in the field. The relative cost of its franchises and good-will might in such a case be to some extent apportioned. But in the present instance, their reproductive value is wholly in the realm of conjecture, and the two elements are so interwoven that there is no apparent basis for their separate appraisement. It is clear, however, that each is of substantial value and contributes very materially to complainant's earning capacity.
>
> As I do not find it practicable to differentiate in figures the value of complainant's franchises and good-will, I have concluded to consider all of the in-

> tangible assets together as a single item, the reasonable value of which I think may be fairly fixed at the sum of $20,000,000."

The Court below considered the good-will inseparable from the franchises and valued only the latter (410-419). He said (410):

> "From the testimony I might think it apparent that what is here meant by good-will is the organization of complainant, long established and doubtless well manned and equipped. Such organization is clearly of value, because without it neither its tangible nor intangible property can be profitably managed. Yet the organization itself is but a method of utilizing that which is invested. It is really dependent for its existence and continuance upon the franchise, without which there can be no useful organization.
>
> Tangible property has a certain value entirely apart from franchise, or right to continue business, or method of transacting business; but good-will in the sense of organization for the business of furnishing gas can have no existence whatever apart or detached from the franchise conferring the necessary privilege."

The Court included a valuation upon franchises against his judgment, but feeling impelled thereto by the "trend of decisions," although recognizing this as a "pioneer case." He said (412-414):

> "As an original proposition I believe this claim unsound. Return can be expected only from investment, and he that invests must part with something in the act of investing. He that hath not sown shall not reap; and can it be said that complainant here or any other corporation similarly situated has invested its franchises in its business? It did not invest *in* its franchise, because it did not pay for it; it

did not invest its franchise because it did not part with it in the same way that it parted with money or money's worth in acquiring or creating mains or plants. The investment of property was made not *in* the franchise, but *under* the franchise and on the faith thereof. The franchise is but a part of the power or privilege of sovereignty, allotted to a private person for the benefit of all and only incidentally given for private emolument. * * *.

"It is familiar doctrine that private citizens may acquire vested rights through a series of even erroneous decisions—rights so firmly vested that it becomes unconstitutional for the Court which persisted in error, suddenly to rectify its mistakes to the detriment of those who had securely rested upon the decisions sought to be invalidated. A Trial Court is in somewhat such a case when confronted with a proposition concerning which as *res nova* it entertains no doubt, but finds it impossible to enforce the opinion entertained, without doing violence to theories of law and habits of legal thought fairly discoverable in preceding decisions of superior jurisdictions. In this case I am compelled to the conclusion that it is necessary to allow the discoverable value of complainant's franchises as part of that capital upon which a fair return must be allowed, because to refuse would be to disregard views expressed by higher courts regarding the general nature of franchises and regulation proceedings. Instead of attempting to minimize and distinguish the decisions to which I have been referred and many others, it is my duty to follow the method of reasoning there clearly indicated, leaving it to the higher tribunals to make distinctions which, if drawn by the lower court, would in my opinion savor of presumption.

* * * * * *

"If franchises are to be reckoned with and paid for in condemnation proceedings, must they also be

reckoned with and allowed for in cases of rate regulation? The rights of condemnation and regulation are both confessedly exercises of police power. If regulation is to be regarded as *pro tanto* condemnation, then the same train of reasoning which requires compensation for franchises when all the property protected by the franchise is taken away, requires that some compensation shall be left when the earning power only is reduced. This is the crucial point of inquiry, and the highest tribunal has not yet encountered the necessity of answering."

As to the method of valuing the franchises the Court said:

"Again, as a method of valuation applied not to taxation, but to rate regulation, the system is reducible to an absurdity, for at what point of time is the inquiry to be made? Clearly before the reduced rate goes into effect. Yet by this method, since the fair rate of return upon tangible property is a constant figure, the capitalization of the residue at the same figure will always give a valuation for the franchise rendering reduction impossible. * * *

"The Master reports that the record contains little direct evidence as to the value of the franchises, and he might have added that if by direct evidence is meant testimony of the same kind regarding their value, as has been offered regarding every item of tangible property, there is none at all.

"I think it obvious as I have endeavored heretofore to point out, that either for the purpose of condemnation or regulation the value of a franchise depends wholly upon what is earned under it, and I believe the best way of finding out how much a franchise separately considered is worth is to ascertain what those persons desirous of continuing operation under it consider it to be worth. * * *

"These considerations applied to the testimony herein enable me to find that this complainant did at the beginning of its career measure the value of its franchises. It does not appear how it was done, nor why the figures selected were chosen, but it is true as matter of fact that when complainant was organized in 1884 under a statute which in terms permitted it to acquire the property and franchises of the older gas companies consolidating to form it, it then issued stock of the par value of $7,781,000, representing the franchises it then acquired and nothing else; and this stock is still outstanding and has since 1884 been in the hands of purchasers, who I am compelled to think have a right to rely upon legal protection for legally issued stock.

"There is no direct evidence that complainant's franchises in 1884 were worth $7,781,000, or are worth that much to-day. I do not see how such evidence can exist; but because complainant made an arbitrary valuation so long ago, issued stock on the faith thereof, did that lawfully, and has maintained dividends upon that stock ever since, I find it *presumptio juris* that complainant's franchises in 1884 were worth $7,781,000; and to that extent it is certainly entitled to protection against confiscatory legislation.

"No capital stock has since been issued upon the faith of franchises only. If, however, complainant's franchises were worth $7,781,000 in 1884, and its tangible property at the same time was appraised (as appears in evidence) at $30,000,000 (in round figures), then since complainant's business (in sales volume) has in twenty-three years almost quadrupled, and its tangible assets grown to $47,000,000, it appears to me that a fair method of fixing value of the franchises in 1905 is to assume the same growth in value for the franchise as is demonstrated by the evidence in the case of tangible property. If,

therefore, the franchise valuation of 1884 was proportioned to personalty and realty of $30,000,000, a franchise valuation similarly proportioned to $47,000,000 in 1905 would be over $12,000,000. * * *

"The overruling consideration is that in 1884 there were issued shares of stock of the par value of $7,781,000; and that stock is outstanding yet, and that it represents a certain fractional part of a business which has enormously increased. Inasmuch as everything in that business is accounted for except the franchises, I have taken that figure as indicating the nearest approach to franchise value, given by the evidence, and a proper starting point for computation."

After receiving the criticisms of counsel upon the method of valuation, the Court stated in an additional opinion (425):

"It is not difficult to detect flaws in a finding opposed to the settled opinion of the Judge who happens to constitute the Court; and as to the history of the stock whose par value is $7,781,000, I think enough has been said in the opinion already filed, to give the higher Court a fair view of the way in which it was issued and the manner in which it was viewed by those who created it.

"But it does not advance the discussion at all to elaborate the history of such creation and issue. For all that I can see the franchises of 1884 might as well have been valued at twice the amount of the stock then issued on the faith thereof. It was nothing but an attempt to capitalize expected profits; but the attempt now has twenty years' success to justify it."

So, must an arbitrary valuation, placed by complainant upon its fran-

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chises as a stock inflation, be counted thereafter as an investment entitling a return in rates, not because it was right to do, but because it was done?

Future enterprises of this character should heed the lesson; for, if the valuation of $7,781,000 and the growth to $12,000,000 can be maintained, there is nothing to prevent an original valuation of $50,000,000 and corresponding growth.

All that is necessary is to keep off the hand of the law for a time—what length of time does not appear—and then the hand of the law will be used to pick the public pocket forever.

The complainant arbitrarily capitalized expected profits in 1884 at $7,781,000, and the Court now adds its own arbitrary capitalization of $4,219,000 in 1908.

Our concern is not as to the legality of capitalization of franchises or good will, but as to the right to receive a return in rates upon such capitalization.

In discussing the subject of good will the Master said (206):

> "It is not necessarily the ordinary commercial good will, such as attaches to an old firm name or place of business and is based in large degree upon the personal standing of the founder of the house. The modern decisions have recognized its proper scope as including that species of intangible value which comes of the gradually building up of a complete organization in the successful operation of a going concern."

And the Master quotes Justice Brewer, in National Water Work Company *vs.* Kansas City, 62 Fed. Rep., 853, as follows:

> "Nor would the mere cost of reproducing the water works plant be a fair test, because that does

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not take into account the value which flows from the established connections between the pipes and buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in machinery and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is to-day. A completed system of water works, such as the company has, without a single connection between the pipes in the streets and the buildings of the city, would be a property of much less value than that system connected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many buildings in the city—not only with a capacity to earn, but actually earning—makes it true that 'the fair and equitable value' is something in excess of the cost of reproduction. The fact that the company does not own the connections between the pipes in the streets and the buildings—such connections being the property of individual property owners—does not militate against the proposition last stated, for who would care to buy, or at least give a large price for, a water works system without a single connection between the pipes in the streets and the buildings adjacent? Such a system would be a dead structure rather than a living and going system. The additional value created by the fact of many connections with buildings, with actual supply and actual earnings, is not represented by the mere cost of making such connections. Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by efforts on the part of the owners of the water works, and inducements held out therefor. The city, by this purchase, steps into possession of a water works plant—not

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merely a completed system for bringing water to the city and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has the ability to earn, but is in fact earning. It should pay, therefore, not merely the value of a system which might be made to earn, but that of a system which does earn."

For purposes of rate regulation, neither franchise nor good-will can be valued separately from tangible property.

The National Water Works Company case was a condemnation case and while, under the rule there stated, good-will is a proper factor for consideration in cases of condemnation or sale, the very description of the qualities of good-will shows that it canont be separately assessed in rate regulation.

We agree with the Court below that in rate regulation good-will is inseparable from franchise, and the same logic would lead to the further deduction that in rate regulation good-will cannot be valued apart from the tangible property.

Upon condemnation or sale there is a value to the tangible property which exists and can be valued apart from the good-will; the business can be considered and valued either as a "not going" business or as a "going" business.

But there can be no such thing as a rate regulation unless the business be a "going" business. The business must be "going" before a rate can be contemplated. The idea of fixing a rate necessarily assumes that the business is "going." **A rate for a "not**

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going" business is impossible of ascertainment or of conception. If the quality of "going" must exist in tangible property before the property can be the subject of consideration for valuation in rate regulation, that quality cannot be separately valued, any more than the tangible property can be separately valued. **If good-will cannot be separately valued, it gives no additional value to the tangible property, but must be regarded merely as the prerequisite to any valuation whatever.**

In fact, the **rate is the earning,** and the **earning is the going.**

No more is good-will separable from franchise in rate regulation valuations. The franchise is merely the **permission to work** given by the public to the company. It is the contract between the State or the municipality and the company, which once having been entered into may become, as such, the subject of valuation upon breach, condemnation or sale, depending in amount upon the terms of the contract.

But, in the performance of a contract, for one party to charge the other party the price, as per contract, for doing the work and then add a bonus for the contractual relation itself—the opportunity to do the work—and then add another charge because the work is done, is so preposterous as not to be seriously contended outside a court of law.

[Of course, a franchise tax is not such an action upon the part of the State, but is an assessment for governmental purposes upon this property as upon any other property.]

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The franchise or permission is the right or opportunity of the complainant to do a service—to put its tangible property to this particular use. **The fact that the company is operating or "going" necessarily presupposes (for purposes of rate regulation) the opportunity and right to operate.** It is doubtful if even the complainant would have the effrontery to invoke the powers of injunction as an *acknowledged* trespasser.

Judge Hough used the illustration of the personal service of the town crier or herald, thus (412):

> "Again, let it be supposed that a citizen be granted a franchise of being a town crier or herald, as an historical illustration. Such franchise is not different in kind from that here under consideration. Is there any value attached to that franchise beyond the right of working under its protection for a fair wage? And would the herald be justified in charging two prices for his proclamation—one for his service and the other as return or income on his franchise?"

The illustration might be amplified to show the difference in the valuation of good-will and franchise in condemnation or sale and in rate regulation.

The herald having been given permission by his sovereign to be a herald (and thereby becoming entitled to the wage of a herald) might choose and be permitted to transfer his occupation and sell his uniform to another. And, depending upon the other's views of the advantages of the position, the franchised herald might be able to collect a bonus for the permission—the right—the opportunity to this particular occupation, and perhaps another bonus to represent the good-will of the business, *i. e.*, the being a "going" herald instead

of a dream. **But could the herald, holding his employment, turn about and charge his sovereign, in addition to a herald's wage, a bonus for his sovereign's permission, or a bonus for being a live herald instead of a dead one?**

The State Controls Price and the Public Shares Profits.

Two points especially must be borne in mind in distinguishing principles governing valuations upon rate regulation from other valuations:

1st. The control of the price or rate is not in the owner of the goods to be sold, but in the State.

2nd. Increased economies and increased profits are bases not for increased valuations, but for decrease in the price or rate.

The complainant took all its franchises subject to the State's right of rate regulation, with none but constitutional limitations and no other limitation should be implied to nullify that right.

The franchises, subject to that right, had a value as offering a field for investment,—the furnishing of a public necessity to an immense and congested population with greatly restricted or no competition,—which has readily attracted surplus wealth. The Constitution guaranteed against confiscation. The prodigality of the public and general inefficiency of public servants assured at least a fair return.

In addition to this value, as an investment with reasonably certain prospects of a fair return, which might command upon a sale more or less of a bonus according to the supply and demand of capital and all the circumstances, the franchises would have a further value in proportion to the ability of the investment to secure larger returns.

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But the value of the franchises depends entirely upon the earnings and in this respect differs from the value of tangible property.

If the company were allowed to fix its own price for its product, as in private enterprises, it might advance and maintain the price, and by larger profits enhance the value of its opportunity to operate the franchises. But, through the nature of the service, the control of the price having passed from the company to the State, the company has lost its power to place any actual valuation upon the franchises.

And the issuance of stock against an arbitrary franchise valuation cannot force the State to allow a return upon that valuation any more than the State would be forced to consider capitalized instead of actual valuations of tangible property.

The State is to determine the earnings. The franchise values are dependent upon the earnings. Manifestly a computation cannot be based upon quantities that it is the purpose of the computation to determine.

The value of a "going" business over a "not going" business consists simply in the greater assurance of profit. As the business progresses the "going value" increases simply because more extensive operations and more efficiency mean greater economy, and greater economy means greater profit. **The right reserved by the public to regulate the rate was meant to be exercised in behalf of the public, as well as in behalf of the company. That right meant nothing to the public if it did not mean that the public should share in the benefits of increased economies by reduced rates, instead of having the increased profits go to the company.**

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The principle of valuation upon condemnation or sale is that the purchaser pays more as profits increase.

The principle of valuation for rate regulation is that the purchaser pays less as profits increase.

Surely the public with an unlimited supply of ungranted permits upon the shelf never expected by mere silence to have to pay eternal tribute for what it overgenerously gave away.

Franchise and Good Will Are Paid for in Operating Expenses.

Again, in valuations upon condemnation or sale, "operating expenses," are not charged as in rate regulation.

Every cent of the cost to the company of all those qualities which distinguish a "going business" from a "not going" business, has been paid for, is being paid for and will be paid for by the consumers in the rates, under the charge for operating expenses.

To a purchaser, including the municipality that purchases through condemnation, the company may say that the established, operating, earning business has an added value over the value of the bare tangible property,—the result of experience, knowledge, skill and accomplishment; but every one of these items of cost have been represented in the salary list, from the president to the office boy, and including the legal advice that seems so essential to a profitable gas business, especially at such crucial times as when the officers are called upon for a plain truthful statement from the books, upon the making of a tax report or upon a rate regulation inquiry.

And this salary list, together with repairs and replacements, the consumers have paid and will continue to pay in the charge for operating expenses. **And the**

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charge for operating expenses is not for a "non-operating" business, or a business as it was operating, but for a business as it is operating NOW, with all the aggregated advantages of experience, knowledge, efficiency and accomplishment of the past and present included.

Once establish in the highest court of the land the right of a corporation to capitalize franchise and good-will against the public right to regulate rates and the resultant wrongs under protection of the law will be inestimable and irreparable.

This device of the valuation of franchises and good-will would serve effectually to prevent the public from ever sharing in increased economies, for the greater profit the greater value of the franchise and good will.

State's Power to Reduce Rates Would Be Nullified.

The valuation of franchises and good-will would nullify the State's power to reduce rates once established. But that power has been upheld by this Court in Stanislaus County *vs.* San Joaquin C. & I. Co., 192 U. S., 213, 214, where it held:

> "It is not confiscation nor a taking of property without due process of law, nor a denial of the equal protection of the laws, to fix water rates so as to give an income of six per cent. upon the then value of the property actually used, for the purpose of supplying water as provided by law, even though the company had prior thereto been allowed to fix rates that would secure it one and a half per cent. a month income upon the capital actually invested in the undertaking. If not hampered by an unalterable contract, providing that a certain compensation

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should always be received, we think that a law which reduces the compensation theretofore allowed to six per cent. upon the present value of the property used for the public is not unconstitutional. There is nothing in the nature of confiscation about it.

"The original cost may have been too great; mistakes of construction, even though honest, may have been made, which necessarily enhanced the cost; more property may have been acquired than necessary or needful for the purpose intended. Other circumstances might exist which would show the original rates much too high for fair or reasonable compensation at the present time. Notwithstanding such facts, are the shareholders of the company to be forever entitled to eighteen per cent. upon this cost, and does a reduction in amount as provided for in the Act of 1885, take away property in violation of the provision of the Federal Constitution? We think not."

(As to ownership of franchises, Part II., 156-170.)

Real Estate.

The Court accepted the Master's report as to the value of complainant's land and the buildings thereon, which it held to be devoted to the public use. The experts who testified for complainant determined the value of the buildings on complainant's land upon the basis of the cost to reproduce them at the present time, less depreciation; they estimated the value of the land itself upon the basis of its market value, as vacant land, at the present time. We concede the method adopted for the valuation of buildings to have been the right method, but we contend that the land should have been valued subject to the servitude of its occupancy by a gas plant. It is reasonable to assume that if complainant's land, occupied by gas plant, were thrown upon the general market, were offered for sale to purchasers who did not want to operate

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the plant, complainant would either have to (1) scrape the plant, and hence practically lose its value, or (2) sell it at a greatly reduced figure for use elsewhere. We urge, therefore, that (there being no competent evidence of record of the value of complainant's land subject to the servitude of its present use, or of an available site suitable for complainant's purposes and capacity), complainant should be allowed the full return of its plant and disallowed the value of its land except so far as that value is represented in cost of the land.

The public cannot be charged for high class residential or congested business district property. Such property would not be selected as a site by a company that expected profits only from the gas business and such profits are all the public is to pay. The excess in value over an available suitable site cannot be realized upon until the gas business is discontinued and, therefore, such excess does not represent property invested in the gas business.

Inasmuch as our contention in this respect will be presented as a subject of special consideration in the brief of the Public Service Commission, we have contented ourselves with a bare statement of the principle which we think should govern the determination of the value of complainant's land and plant.

Plant.

The term plant includes all the machinery, tanks, everything which constituted the plant for the manufacture and transmission of gas except the mains, services, metres and personal property (1034, 1035).

Appellant contended that the method of valuation should be the actual cost less depreciation, or the present cost of a modern plant of like capacity.

The method employed was the present cost to reproduce the identical plant.

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Upon this subject the learned Judge at Circuit said:

> "It appears by undisputed evidence that some of these last items of property cost more than new articles of the same kind would have cost at the time of inquiry; that some are of designs not now favored by the scientific and manufacturing world, so that no one now entering upon a similar business would consider it wise to erect such machines or obtain such apparatus. In every instance, however, the value assigned in the report is what it would cost presently to reproduce each item of property in its present condition and capable of giving service neither better nor worse than it does now. * * * Upon authority, I consider this method of valuation correct."

A corporation engaged in a public service is entitled to a return only upon property necessarily devoted by it to that service by the operation of a reasonably efficient plant, conducted with reasonable economy and ability.

Regan *vs.* The Farmers' Loan & Trust Co., 154 U. S., 362.

Smith *vs.* Ames, 169 U. S., 543.

San Diego Water Company *vs.* City of San Diego, 62 American State Reports, 275.

Covington, etc., Turnpike Co. *vs.* Sanford, 165 U. S., 478.

The question of whether or not a particular plant is reasonably efficient, or is being conducted with reasonable economy and ability, must necessarily depend upon the "state of the art" of gas manufacture and distribution. If a gas company's plant is to-day of an obsolete type, requiring twice as large an investment to manufacture and distribute gas as would be required if it were employing modern and efficient plant, which was used by other companies engaged in business in the same

field, and which was accessible for its use, it obviously would not be entitled to charge a rate which would enable it to yield a return upon an investment much larger than would be required to produce the same output.

The test of reasonableness of a given rate, which includes the reasonableness of the investment and plant upon which it is predicated, must necessarily be—whether the company's investment in plant is reasonably necessary in consideration of the state of the art, for the production of its output, for rendition of its service to the public.

It would be obviously absurd to hold that a law was unconstitutional which did not yield to *every company affected by it* a return upon its investment, the return upon the cost of reproduction of the plant which it employed, however unreasonable the investment or however inefficient and obsolete the plant might be.

The evidence in this case was limited to the valuation of the plant of the complainant alone. It, therefore, will not sustain a finding that the rate fixed by the statute is an unreasonable and confiscatory rate because of its failure to yield a fair return on the company's plant, unless it be shown that the company's plant is an economical and efficient plant from the standpoint of the present state of the art, available for use in the field of the company's service.

The record shows what it would cost to reproduce the complainant's plant and every part thereof as it now stands. The record tends to show that a large part of such plant is obsolete, is grossly inefficient from the standpoint of the present state of the art, and that the cost of production thereby is greatly in excess of what it would be if the company employed modern methods and appliances available for its use in the field of its operation. The record does not show what it would cost

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to construct a modern plant of the capacity of that now in use by complainant.

The State and the City produced before the Master Dr. Marks and Mr. Edgerton as experts. Dr. Marks made a personal examination of the plant and detail, including buildings, apparatus, holders and tanks, and appraised them at a total value of $9,348,692 (5058-5018). The valuations for each plant made by him on which this total is based appear on pages 5063-5013. The method used by Dr. Marks in arriving at the valuation was to have the total actual first cost of buildings and structures based upon original inventories, using actual cost for additions, less depreciation in proper amount; also to add first and subsequent costs in each case of yard and holder connections, less proper depreciation; also to add the actual cost of foundations for holders and steel tanks without depreciation where same has not appeared; also to add the actual cost of new buildings added without depreciation where same has not appeared; also to add actual cost of new buildings added without depreciation, and by the above method to arrive at the actual value of buildings and apparatus (5063).

Mr. Edgerton examined all the plant and apparatus and gave a total valuation of $10,023,057.25, the details of which will be found (5119-5238). He adopted the inventory furnished by Complainant's witness, Mr. Mayer, and used Mr. Mayer's measurements with the exception of a few where he made his own and checked them. He found that in same instances the measurements given by Mr. Mayer were not correct (5116). In his appraisal and preparation of same he took station by station and aggregated the buildings, then the apparatus, following the divisions adopted by Mr. Mayer; then calculated out the details and corrected by himself and had a typewritten copy made (5118). In certain instances he adopted Mr. Mayer's figures because he did not have an opportunity to make a calculation of him own as to

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certain machinery and various small items and some large ones (5118). He figured as to each item the depreciation by reason of physical deterioration.

There were also the sworn statements of Complainant's officers in the Tax Reports of 1904 and 1905.

However, the Master chose to disregard this evidence and he relied upon the appraisal of Mr. Mayer ($15,532,489, reduced to a round $15,500·000) as the basis for defeating the legislative act, and the Court has sustained his finding.

Yet complainant's witnesses admitted that the identical plants would not be reproduced at the present time. It is apparent that the separate scattered plants of the constituent companies would not have been so constructed for the consolidation even twenty years ago. They were constructed for six companies instead of for one, and since have become antiquated and of less efficiency than a modern plant of less cost.

The plants would not have been reproduced, even in 1884.

Mr. Bradley, the chief engineer of the company since 1886, testified:

> "*Q.* If you were going to reproduce to-day a gas plant to produce the entire amount of gas that is now manufactured by the Consolidated Gas Company, would you reproduce these plants? *A.* I think that question is answered by the very work I am engaged on now in the Astoria plant. It is not a reproduction" (995).

Mr. Mayer testified:

> "*Q.* If you were called upon to construct a plant for the use of the Consolidated Gas Company to-day, would you scatter the works around as they are here? *A.* I certainly would not. *Q.* The

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works divided in the five manufacturing stations require a much larger investment in plant, do they not, than it would to bring them together in one station? *A.* Decidedly. *Q.* And also the cost of operation is very much more in a scattered station than it would be in the one station? *A.* Yes, sir" (1570).

Some further detail upon this subject is given in Part II.

The decision of the Circuit Court thus squarely puts to this Court the question, whether a maximum rate of charge for gas fixed by the Legislature of the State is confiscatory because it does not allow to complainant a return upon unnecessary investment, upon a much greater investment than, in the light of the present state of the art of gas manufacture and distribution, would be required to produce its output; whether such a company is entitled to earn a fair return on obsolete machinery, the present reproductive value of which is greater than would be the cost of moden efficient machinery of the same productive capacity.

(Further details concerning plant valuation are given in Part II., 133-148.)

Cost of a Modern Plant.

Complainant offered no evidence upon the theory of the value of a modern plant capable of complainant's output and the valuations of the Master and Court below were not upon that basis.

We have presented an estimate, the argument of which is set forth in Part II. hereof, pp. , which shows that, upon the basis of the cost of the construction at Astoria, coal and water gas plants of complainant's present daily capacity of 51,000,000 cubic feet would cost $11,738,518, as against the Court's finding of $15,500,000, a saving of $3,761,482.

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This would show:

Real estate (less deductions)	$10,422,106 30
Plants	11,738,518 00
Mains and services (book value)	7,852,151 03
A total of	$30,012,775 33

Master's valuation, same items	$43,591,000 00
Court's valuation, same items	42,415,435 00
Original cost, same items	29,266,757 46
Carter swore to truth before Legislative Committee	27,408,700 00

Assuming a plant of 70,000,000 daily capacity on Astoria land, 20,000,000 coal gas and 50,000,000 water gas, and allowing the full value of land, tunnels, etc., designed for a plant twelve times the present unit, and we have:

Astoria land, tunnel and plant, including 15,000,000 holder and tank for a second one of same capacity, everything as per complainant's Exhibit 235	$13,250,739 60
Water gas plant, 50,000,000 capacity.	6,150,000 00
Holders and holder stations	4,109,048 00
Total plant value and Astoria real estate	$23,509,787 60

The total realized by srapping of Manhattan plants would be $5,869,770, which should be deducted from the Manhattan real estate, and we have:

Real estate, Manhattan	$4,533,336 30
Real estate and plant, Astoria, holders and holder stations, Manhattan	23,509,787 60

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Mains and services (book value).....	7,852,151 03
Meters and miscellaneous.....	4,100,000 00
Working capital.....	1,616,000 00
	$41,611,274 93

Astoria, *i. e.*, capital invested, etc., included above in plant, as against the Master's finding of $63,307,000.

On the Master's finding as to the net return for 1905, this would give a return of 5.33 per cent. But in addition to this we have the testimony of Mr. Bradley that he expected to manufacture gas five or six cents per thousand cheaper in Astoria than he could in Manhattan (1730-1731). If we allow five cents per thousand on the $13,283,163.767 we would add to the $2,327,328 the sum of $664,158.18, making a total of $2,991,486.18, or a return of 6.87 per cent.

And this on a plant that is capable of producing 14,000,000,000 cubic feet per annum, and has sufficient real estate to allow an extension of the plant to 48,000,000,000 cubic feet per annum, or twice as much as is to-day consumed in the Boroughs of Manhattan and The Bronx (577-578).

(Further details are given in Part II., 148-156.)

Mains and Services.

The method of valuation was an estimate of the present cost to reproduce the identical mains and services, without allowance for multiplicity by reason of being laid by six companies instead of one, and, notwithstanding the charges for current repairs and replacements already covered, the additional expense of laying under modern conditions of pavements and use of streets.

This method differed from the method employed for valuing the plant, which was cost of identical plant less depreciation. The methods of valuation shift according to the varying advantage to the complainant against the public, and this method adds $4,783,848.97 in excess of original cost, without allowance for depreciation from use.

There have been four valuations upon the mains and services by complainant:

1. The book value which is supposed to show the actual cost, and that is $7,852,151.03.

2. The value reproduced new, given to the State Board of Tax Commissioners, less depreciation, $4,398,-106.82. (Exhibits, p. 311.) This valuation was calculated upon the information furnished by Colin C. Simpson, assistant secretary of the company in charge of the mains.

3. The testimony of Colin C. Simpson given before the Gas Commission that there were 880 miles of mains valued at $11,687,466.41. (1751.) A value of $13,-281.21 per mile; and

4. The value given by Simpson in this case, that there were 822.2 miles of active mains at a value of $12,-636,150. (1747.) A value of $15,368 per mile. As a matter of fact, there are only 795.47 miles of active mains (1746), making a difference in favor of the company in the last valuation of $426,173.05.

The Master and Court found that the mains should be given the highest value testified to by Simpson, namely, $12,636,000, at the full cost of relaying all the mains under present conditions, assuming that it would cost the same price to relay the pavements on the entire work that they have to pay for repair jobs. For instance, the Master allows for granite block pavement $8 for the first square yard and $4 for each additional yard, while

Simpson testified: "I can contract for the same pavement for $1.90 per yard. We are permitted now this last year; if an opening is over 250 feet long we are permitted to contract with the contractor to replace the pavement for us, but we have only just started on that." (671.) Q. For any smaller jobs you are still—A. Paying $8 for the first yard and $4 for the additional yards; in small openings it is generally only one yard. (671.) Mr. Simpson further testifies: "The total mileage is a little over 880 miles. Of that 880 miles at least 90 per cent. are either brand new or put in condition to be as good as new. That is, they have been restripped, re-examined and recaulked. (1752.) That the mains stripped and new laid amounted to 95 per cent. of all (668), and that since he had been general superintendent he had seen practically all of such mains." (700.) Therefore, in the book value of the mains, or in the repairs and replacement account we find that the consumer has been charged with the expense of the laying of the mains and the expense of the repairing and the expense of repavement, and to now add $4,783,998.97 as the additional cost, because of pavements and other modern conditions, is to compel the consumer to pay twice on this item.

IV.

Only property necessary for the particular use may be valued.

The owner is entitled to a return only upon the fair value of the property necessary for the particular use.

Covington and Lexington Co. *vs.* Sanford,
164 U. S., 578.

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For there may "have been extravagant and needless expenditure of money" in construction; it may have been invested in a plant "unwisely built" (Reagan *vs.* Farmers' Loan and Trust Company, 154 U. S., 362); "it may have been invested in property that cost more than it should have cost" (San Diego L. & T. Co. *vs.* National City, 174 U. S., 739). "Great mistakes of construction, even though honest, may have been made, which unnecessarily enhance the cost; more property may have been acquired than necessary and needful for the purpose intended" (Stanislaus County *vs.* San Joaquin C. & I. Co., 192 U. S., 201); and "reckless and unnecessary expenditures, not legitimately incurred in the acquisition, construction or preservation of so much of the plant as is necessary for the purpose, may have been made (San Diego City Co. *vs.* City of San Diego, 62 Am. St. Rep., 273).

The question of reasonableness of a rate involves the element of reasonableness, both as regards the company and as regards the public.

Chicago, etc., Railroad *vs.* Minnesota, 134 U. S., 450.
Turnpike Co. *vs.* Sanford.

V.

Rate Must Be Just to the Public.

"That the utmost that a corporation, operating a public highway can rightfully demand at the hands of the Legislature, when exercising its general powers is, that it receive what, under all circumstances, is such compensation for the use of its property as will be just to it and to the public."

San Diego Land Co. *vs.* National City, 174 U. S., 757.

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"The company is entitled to a fair return upon the reasonable value of the property at the time it was being used for the public."

San Diego Land & Town Co. *vs.* Jasper, 189, U. S., 442.

"The owner is not entitled to earn a fair return upon the money invested in the property, *but only upon the amount necessarily invested in the enterprise upon the fair value of the property necessary for the particular use.*"

Covington & Lexington Turnpike Co. *vs.* Sanford, 164 U. S., 578.

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public, and in order to ascertain that value, (a) the original cost of construction, (b) the amount expended in permanent improvements, (c) the amount and market value of the stocks and bonds, (d) the present as compared with the original cost of construction, (e) the probable earning capacity of the property under the particular rates prescribed by the statute and (f) the sums required to meet operating expenses, are all mattters of consideration and may be given such weight as may be right in each case."

Smyth *vs.* Ames, 169 U. S., 546.

"It is not confiscation or the taking of property without due process of law, nor the denial of the equal protection of the laws, to fix water rates so as to give an income of six (6%) per cent. *on the prop-*

erly actually used for the purpose of supplying water as provided by law."

San Diego Land & Town Co. *vs.* Jasper, 189 U. S., 442.

San Diego Co. *vs.* National City, 174 U. S., 739; Chicago, Mil. & St. P. Ry. *vs.* Smith, 176 U. S., 167; Stanislaus *vs.* San Joaquin, 192 U. S., 201.

VI.

The public has the right to the benefit of progress in the art.

The constitutionality of a law establishing a maximum rate for a public service within a field of operation where the same conditions with respect to cost prevail, does not depend upon the cost of gas to a particular company which challenges the law.

Complainant offered its own tabulation exhibits taken by its experts from its books of account for a single year (1905) as proof of the cost of the manufacture, distribution and sale of gas in the field of its operation. The Attorney General objected to such evidence upon the ground that proof of such cost to complainant for a single year was not proof of what it would reasonably cost to produce gas in that particular field of operation, and that such cost could only be shown by proving (1) that complainant was operating a reasonably modern, efficient plant with reasonable economy and ability, and (2) by so doing, what it had cost it to produce gas during a period of several years preceding the date when the laws challenged took effect.

It would seem clear that the single year selected might have been abnormal in respect of cost, because of violent

fluctuations in the cost of labor and materials necessary for the manufacture and distribution of gas, or (stating the reason conversely) that proof of the average cost for the period of several years would be better evidence of normal cost than the proof of cost for a single year. There was just as much reason for the Court's taking evidence of the average cost of labor and material (subject to fluctuation in cost) for a period of several years, as for its taking evidence of the company's expenditures to cover repairs and renewals, or depreciation, for periods of eleven and twenty years; just as much reason for taking the average cost of labor and materials for a period of years and adopting it as a normal cost, as taking the average expenditures on account of depreciation for a period of years and adopting that average as normal annual depreciation.

Complainant's counsel, replying to defendants' contention that proof of cost should cover a period of several years, rather than a single year, urged that evidence of the cost of gas to complainant for the years 1903 and 1904 had been submitted to a legislative investigating committee of the State by an expert employed by it, and that such evidence was available to the defendants if they thought it material. The contention of counsel for complainant, which was accepted by the Master and approved by the Court, was based upon the assumption that the burden of proof was upon the defendants to show that the rate challenged was a reasonable rate, and not upon the complainant to show that it was an unreasonable rate.

The record fails to show that the several manufacturing plants of the Consolidated Gas Company were reasonably modern and efficient or that they were conducted with reasonable economy and ability; in other words, the record fails to show that what it cost the Consolidated Gas Company to manufacture gas in the year 1905 is what it would have cost a company operating a reason-

ably modern, efficient plant with reasonable economy and ability, to manufacture gas of the same quality and quantity in the same field and subject to the same conditions.

If the standard of efficiency in the year 1823 is to be used to defeat legislation based upon the state of the art in 1908, the public would be forever precluded from receiving the benefit of economies due to progress in this art.

The State has the right to secure to the public the benefits of the advancement in the particular science affected by the law, and its power so to do is not to be restricted by the employment of obsolete apparatus or the use of methods which that particular science has long since discarded.

The State has the right to require that gas be sold to the public by a public service corporation at a rate which would yield an owner employing plant and methods which are modern and efficient at the time of the enactment of the law, a fair return upon the property necessarily employed by the owner in the rendition of that service.

The idea is clearly expressed by this Court in the Gill case, 156 U. S., at page 657:

> "Given the case of a general law prescribing rates to all companies, can the courts inquire whether such rates are reasonable, and may they find that as to one company the prescribed rates permit it to do business at a profit, and as to another, whose facilities are inferior, or where expenditures are greater, the rates afford no profit? And will the fate of the law, as to its validity depend in each case on the result of such an inquiry?"

The complainant having failed to show that the cost of gas to it is what it would be to any well equipped and well managed company operating in the same field under

the same conditions, there is not sufficient evidence to sustain a decree in its favor.

VII.

Complainant is not entitled to duplicate values.

Land is given enhanced value as vacant land, which would require scrapping of plant, yet the plant is given its full value.

Plant is allowed present cost of identical plant, with an allowance for current repairs and renewals, designed to keep it presently efficient, and in addition an allowance to periodically repay the present cost of the identical plant in the 11-cent item.

Mains and services are allowed an appreciation over cost due to added expense of relaying; they also are allowed the expense of present relaying in current repairs and renewals, designed to keep the mains and services presently effective, and an additional allowance to periodically repay the present enhanced valuation in the 11-cent item.

Operating expenses are allowed, which presume a "going" business and a "right" to go; yet an additional allowance has been made for the mere fact of operating.

Ultimate renewal allowance is made, including insurance against remote risks, inexperienced in over eighty years.

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VIII.

The eighty-cent rate will be held to yield complainant a fair return unless it is plainly and palpably confiscatory.

This Court has held that it will not interfere with a rate of charge for a public service established by a statute unless it is so plainly and palpably unreasonable as to make its enforcement equivalent to taking complainant's property for public use without such compensation as, under all the circumstances, is just both to complainant and the public; that is, unless the case presents, *clearly and beyond all doubt,* such a flagrant attack upon complainant's right of property under the guise of regulation as will compel this Court to say that the rates prescribed will *necessarily* have the effect of denying complainant just compensation for the property taken for the public use.

Chicago, etc., *vs.* Wellman 143 U. S., 339, 444.

Reagan *vs.* Farmers' Loan and Trust Co., 154 U. S., 362, 391.

Smyth *vs.* Ames, 169 U. S., 466, 529.

Henderson Bridge Co. *vs.* Henderson City, 173 U. S., 592, 614, 615.

San Diego Land Co. *vs.* National City, 174 U. S., 739, 754.

San Diego Land Co. *vs.* Jasper, 189 U. S., 439.

Ball *vs.* Rutland R. R. Co., 93 Fed., 19.

Palatka Waterworks *vs.* Palatka, 127 Fed., 161.

The rule declared justifies the deduction that this Court, in its use of the phrase "*so plainly and palpably*

unreasonable," intended to distinguish between a rate of charge that *may be* confiscatory and one that *is clearly and palpably confiscatory;* that this Court intended to declare the rule that where there was any doubt as to whether the rate fixed would yield a fair return on the property devoted to the public use, it will be presumed to yield such a return, and that such presumption will continue, notwithstanding uncertainty and doubt, until *it is clearly and palpably shown that the rate is confiscatory.*

The doctrine enunciated justifies the further deductions: (*a*) It will be presumed that every item of investment of gas cost which we here challenge (the elimination of which will tend to support the rate complained of) was determined by the Legislature, when it established the 80-cent rate, not to be a proper element of such investment or gas cost; and (*b*) it will be presumed, where there is doubt about the propriety and reasonableness of the allowance of *items* of investment or gas cost, that the Legislature held them to be improper and unreasonable allowances, where the constitutionality of the rate cannot be sustained upon any other rational hypothesis.

We have challenged in this case the propriety and reasonableness of the Master's allowing complainant a return upon the value of its alleged franchises, the value of the Astoria first unit, an unearned increment in the value of complainant's real estate, and upon the excess of the reproduction value over cost of complainant's mains and services, and we have opposed the allowance of certain items of cost heretofore stated.

Unless the eliminations for which we have contended are plainly and palpably so unreasonable as to be equivalent to taking complainant's property for public use without such compensation, as under all the circumstances is just both to the complainant and to the public, then our contention should be sustained, and these several items should be eliminated.

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IX.

The maximum rate fixed by chapter 125 of the Laws of 1906, will permit complainant to earn a fair return upon the property employed by it in its gas business.

(1) If this Court should affirm the findings of fact contained in the decree, namely (*a*), that the value of the property of complainant devoted to the public use, inclusive of the value of its special franchises, is $59,831,435, and (*b*) that complainant's net income under the eighty-cent rate established by chapter 125 of the Laws of 1906 would be $3,024,592.45, then the finding of this Court will be that the complainant will earn, under the eighty-cent rate established by chapter 125 of the Laws of 1906, a return of five and five-tenth (5.5) per cent. per annum upon its investment, or upon the property devoted by it to the public use, inclusive of the value of the permission to devote that property to the public use.

We contend, upon the authorities and for the reasoning heretofore advanced, that such a per cent. of return constitutes a fair return on the property employed by defendant on its gas business. We contend, that a statute which permits a public service corporation to earn a return of five and five-tenth (5.5) per cent. per annum upon investment in constantly appreciating realty, in plant and property in the streets protected against depreciation, and upon intangible property, which is constantly appreciating in value, *does not constitute confiscation* of that property.

(2) If this Court should affirm the finding of fact contained in the decree that the value of the tangible property devoted by complainant to the public use was $47,831,435, and should hold that complainant's special

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franchises were not property on which it was entitled to earn a return, and should affirm the finding of fact contained in the decree that complainant's net income, under the eighty-cent rate established by chapter 125 of the Laws of 1906, would be $3,024,592.45, then the finding of this Court will be, that complainant will be able to earn, at the rate established by chapter 125 of the Laws of 1906, a net income on such property of six and 3/100 (6.03) per cent. per annum.

We contend, upon the authorities and for the reasons heretofore advanced, that a six and 3/100 (6.03) per cent. return per annum upon such property would not only not be clearly and palpably confiscatory but would constitute more than a "fair return" thereon.

Under methods of property valuation adopted by the Court, the provisions for keeping the appreciated property intact and replacing same, and the advantages of monopoly in an unparalleled degree, we submit that complainant has failed to sustain its burden of proof of showing the legislative rates clearly and palpably confiscation.

X.

The provisions as to candle power, pressure and penalties do not invalidate the acts and they are separable.

Reagara *vs.* Farmers' Loan and Trust Co., 154 U. S., 362, 394-6.
Consolidated Gas Co. *vs.* Mayer, 146 Fed. Rep., 155.

These provisions are discussed more in detail in Part II.

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XI.

The eleven cent allowance by the Court was excessive.

We submit that all this allowance in excess of 7.70 cents for current repairs and replacements is excessive. The 7.70-cent charge keeps the plant at all times presently efficient. The average for twenty years has been 10.89 cents, and the development of the capacity under that average shows that it was much more than necessary for the purpose now pretended.

"Even if the 'depreciation' which this item represents was 'depreciation proper,' or depreciation accrued, or definitely to accrue by reason of actual abandonment and substitution, it is not a proper charge against operation.

"In Cedar Rapids Water Company *vs.* Cedar Rapids, the Court said:

> "'So also, we may say, we see no reason why the plaintiff, in addition to operating expenses, repairs and other ordinary charges, should be allowed to reduce the apparent profits by deduction for a restoration or rebuilding fund. The setting aside of such a fund may be good business policy, and if the company sees fit to devote a portion of its profits to that purpose (*though, as we understand the record, no such fund has as yet been carried*), no one can complaint; but it is, in no just sense, a charge affecting the net earnings of the works. To hold otherwise is to say that the public must not only pay the reasonable and fair value of the service rendered, *but must in addition pay the company the full value of its works every forty years,* the average period estimated by plaintiff, for all time to come.'

"The same subject was considered by Garoatte, *J.*, concurring, in San Diego Water Company *vs.* San Diego, *supra,* where he said:

"'The theory of the plaintiff in this regard seems to be that the life of a plant of this character may be approximated at thirty years, and that a sinking fund of one-thirtieth of its value should be collected from the rate payers annually and be laid aside to be handed to the stockholders upon the sad occasion of its demise, as an alleviating salve to their sorrow. But such a thing is all wrong, for it results in the consumers of water buying the plant and paying for it in annual installments. Consumers of water cannot be charged with *the cost of construction.* They are only to pay a fair interest upon such cost, and as we look at this matter, if this 3½ per cent., is to be stowed away in the vaults as a sinking fund to make glad the hearts of the stockholders upon the expiration of thirty years, which theory cannot be tolerated for a moment, then it must go to the plant as cost of construction, and, therefore, not chargeable against the consumers.'

"Van Fleet, *J.*, who wrote the prevailing opinion in the same case said:

"'With regard to the question of the depreciation of the plant by use it is sufficient to say that *ordinary repairs* should be charged to current expense, that *substantial reconstruction,* or replacement, should be charged to the construction account, and that depreciation should not otherwise be considered. It is doubtless difficult, in many cases, to properly discriminate between current and ordinary repairs and such repairs as amount in effect to new construction. Such difficulties when they arise must be solved by the application of the principles on which ordinary business enterprises are conducted.'

"The true theory of the bookkeeping of the cost of operating is as stated in the excepts above. Operation should only be charged with ordinary repairs, and as such

should be reckoned as an element in the cost of product delivered, or of the public service. Substantial renewals, or replacements—a new building for an old—new apparatus for new and modern apparatus— new pipes for old—should be charged to construction, but should not be reckoned as affecting the cost of the delivered product, or the public service, the principle being that where anything unserviceable is replaced by a thing serviceable, it should be treated as *new* construction—the company simply saving, as another business enterprise would, the scrap value of the thing discarded to be reinvested in the thing replaced.

[Further consideration of this in Part II, 112-123.]

Correction.

We desire to correct a seeming misunderstanding among counsel as to the powers, etc., of the Attorney General. He is the constitutional law officer of the State and has the power and duty to represent the people of the State in all actions and proceedings wherein they are interested. The creation of the Public Service Commissions may have given them some co-ordinate functions, but in no wise as superseding the Attorney General.

Part II.

Being an argument of some subjects more in detail, as presented by our counsel in the court below, David B. Hill, Esq., Alfred R. Page, Esq., and William A. Deford, Esq.

The Penalties do not invalidate the acts.

Judge Hough said:

> "I am of the opinion that the penalty clauses in both statutes are clearly obnoxious to the remarks of Brewer *J.*, in *Cotting* vs. *Kansas City Stock Yards Co.*, 183 *U. S.*, 79."

In this he followed Judge Lacombe, who, upon granting the preliminary injunction herein, cited the same case, and said:

> "It is difficult to see in what respect the provisions of the two acts now under consideration differ from those passed upon in the Kansas City Stock Yards case, except that they are perhaps more drastic. On this branch of the case there is no controversy as to the facts, and, under the opinion last quoted, these provisions seem obnoxious to the Fourteenth Amendment to the Constitution of the United States."

We respectfully submit that this opinion does not accord with the construction the New York Court of Appeals has placed similar provisions in the statutes of that State, in Griffin *vs.* Interurban Street Ry. Co., 179 N. Y., 438; 180 N. Y., 538, and in Jones *vs.* Rochester Gas Co., 168 N. Y., 65, 68, and Cox *vs.* Paul, 175 N. Y., 328.

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In Cox *vs.* Paul, the opinion states: "That this Court is committed to the doctrine that a party suing for penalty can recover but for one violation and but one default prior to the commencement of the action."

The Griffin case arose under the so-called "Free Transfer Law" (N. Y. Railroad Law, sec. 104). That statute requires the street railroad company under certain circumstances to give a free transfer to each passenger at any point of intersection between two of its lines. The remedy is as follows:

> "For every refusal to comply with the requirements of this section, the corporation so refusing shall forfeit fifty dollars to the aggrieved party."

The Appellate Division held that cumulative penalties were recoverable under this provision, but the Court of Appeals reversed the ruling, and held that only a single penalty was recoverable, no matter how many separate violations may have occurred of the rights of the passenger suing.

There is even less ground of objection in this act than in the free transfer act. The free transfer act gives the penalty to the passenger whose rights are violated. This eighty-cent gas law, however, provides the penalty not as a remedy to the consumer (whose remedy is to refuse to pay the bill and resist the removal of his gas meter), but "for each offense to the people of the state." It belongs to the class of quasi-criminal as distinguished from that of remedial penalties.

If the penalty of the act challenged be construed in accordance with the doctrine of the New York cases cited, then the penalty provisions complained of are not excessive and are not calculated and could not have been intended to deter the complainant from litigating its rights, nor did they operate to deny to complainant the equal protection of the laws.

We submit, therefore, that the penalty provisions of the statute are so definitely separable from the maximum rate provision that each can stand alone, and that it is clear that it is the intention of the Legislature that the maximum rate provision should stand and should be enforcible, even though the penalty provision should fail.

Pollock *vs.* Farmers' Loan Company, 158 U. S., 601.
Poindester *vs.* Greenhow, 114 U. S., 270.

PRESSURE.

The provisions of the laws as to pressure were not shown by complainant to be either physically or commercially impossible.

Chapter 736 of the Laws of 1905 and chapter 125 of the Laws of 1906 contain the following provision in regard to pressure:

> "The pressure of illuminating gas in any service "main in said city at any distance from the place of "manufacture, shall not be less than an inch nor "more than two and one-half inches."

The bill of complaint, at paragraph 23, avers:

> "It is an absolute physical impossibility for your "orator to comply with the provisions in regard to "pressure. The pressure must of necessity vary "beyond the limits prescribed thereby in the mains "of your orator, owing to differences of elevation "of the city mains and the consequent difference of "atmospheric pressure, and owing to the laws of "nature these differences of pressure cannot be ob-"viated by your orator."

Thus it will be observed that the complainant rests its case solely upon the increase of pressure occasioned by higher altitudes.

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Mr. Bradley showed that in so far as distance from the works was concerned the company could control the pressure by delivering gas through a trunk main at high pressure and by means of a district governor reducing it and delivering it into the service mains within the district at any given pressure (567, 568).

The complainant's claim as to altitude is that the pressure of gas in the mains increases one-tenth of an inch in every seventeen feet of altitude. But they fail to make allowance for the reduction in pressure by reason of the friction of the gas in the pipes, which is the reason that gas works are always placed at the lowest possible level; that by reason of the rise in the mains the levity of the gas will overcome the friction in the pipes. Mr. Bradley admitted this and stated that the loss in pressure was considerable; that he had tables that would show just what it was (570, 571), but he never produced them. That the loss in pressure by reason of friction in the pipes is considerable is shown by the fact that in delivering gas in a twenty-four inch main from Twenty-first street to Beaver street, starting with a pressure of four pounds, "it reduces itself; we do not get any more pressure there "than we require with that initial pressure at Twenty-"first street. That is the friction" (570, 571). Professor Humphreys gave an elaborate formula for obtaining the loss or absorption of pressure (1780, 1781), and stated that in a forty-eight inch main that an initial pressure of two and one-half inches would be reduced to one inch in forty-eight feet of pipe, but on carrying the subject to its legitimate conclusion he substantially changed his testimony (1781-1783), that in a forty-eight inch main you would lose an inch and a half of pressure in a mile of main (1783), and further that if the main had a gradual upward rise of ten feet to each 700 feet of pipe, that this would tend to offset the loss of pressure (1783, 1784). And, furthermore, that an automatic governor placed at any point would maintain an equal

pressure in the mains by admitting more gas as the pressure fell and closing down to admit less gas as the pressure rose (2091), and also that pressure could in some respects be equalized by carrying a trunk main for a considerable distance and then connecting it with the distributing main in which the pressure had been reduced by friction and the drawing off of gas by consumers. We have, however, in the testimony of Mr. Edgerton two comparisons, one taken at Columbia University, which is 150 feet above the sea level, and the other taken at No. 386 West One Hundred and Twenty-fifth street, at the bottom of the hill, and we find by comparison of the charts of the two experiments, Exhibits JJ 1-16 with KK 1 and 2, that there is a difference in the pressure of three-quarters of an inch less at the bottom of the hill than at the top (2924). That Edgerton's experiments throughout the city show that it is entirely within the power of the gas company to regulate its pressure within the limits prescribed by law, and that with certain changes in the company's system of distribution a pressure in any service main at any moment of not less than one inch nor more than two and one-half inches could be complied with, with less care and attention and less risk of a momentary compliance, than under the present system (2928), a system of districting the city and placing higher altitudes in a district regulated and controlled by an automatic governor is a well-known device of gas engineering to regulate and control pressure, as is stated in Newbigging handbook for gas engineers and managers, which, Mr. Bradley stated to be a standard authority, as follows: "For the supply of gas "to varying levels, therefore, separate leading mains with "a station governor upon each are highly advantageous "and should be employed wherever practicable" (570). And at page 570 of the testimony Mr. Bradley stated that it was theoretically practicable to divide the city into districts, and place district regulators or governors at each district, and that in many cities this system is used,

and that the reason that Mr. Bradley has not used them is that he is afraid to trust a machine to work automatically and that he supposes that in the other cities the managing engineers have more nerve than he has.

Therefore, it would appear that the difference in pressure occasioned by a difference in altitude may be entirely regulated and controlled by devices well known to gas engineering science and which are in practical operation in many cities of the United States, and, therefore, on the one ground stated by the complainant on which it attacks the pressure provision of the law, that because in difference of elevation it is impossible to comply, they have entirely failed to establish their case and that the contrary has been conclusively shown. As to the necessity for regulating the pressure at which gas may be delivered to consumers, it is only necessary for the Court to take into consideration the exhibits put in evidence by the complainant (Exhibits 345-366-b, inclusive), in which it will appear that in the instances of greatest variation the company has attached service pipes and are delivering gas to consumers upon pumping mains as shown by the rapid fluctuation in pressure upon the chart (see Exhibit 364), as compared with exhibit showing the corresponding fluctuations charted, and the testimony of Edgerton, Hallock and Humphreys as to the efficiency of gas delivered at a uniform pressure.

The evidence is very well summarized by the Master (Master's report, 248, 249). He, however, fails to draw a conclusion, but from his statement it is very clear that the question of pressure at which illuminating gas should be delivered is clearly within the police power of the State, and in order to set aside the regulation prescribed by the Legislature, it will be necessary for complainant to show that it was impossible to comply, and that by the application of no known device could the pressure be regulated. The complainant's witness admitted that the pressure could be regulated by the installation

of district governors, which was a method recommended by Newbigging, an eminent English authority.

Upon the subject of pressure the Circuit Court said:

> "By the expenditure of about $4,000,000 for construction of mains and valves alone, exclusive of any pumping stations or other apparatus, it might be possible to establish and maintain the pressure called for by these acts. Such a thing is commercially impossible, and even if it were done (of course at complainant's expense) it remains commercially impossible, since the other parts of the statutes cut off the surplus income out of which alone complainant could be expected to perform the work. A change by means of new capital would be impossible, because when made it would not add a dollar to income."

The Court, therefore, found that (*a*) the compliance with pressure regulation was *physically possible,* but (*b*) that it was commercially impossible.

If compliance with the pressure regulation was *physically possible,* then the regulation is not obnoxious to the Constitution because of complainant's inability to comply with it.

If compliance with the pressure regulation is *commercially impossible;* that is to say, impossible except by the reconstruction of complainant's distributing system and by the investment of additional capital, it cannot be obnoxious to the Constitution, except upon the ground that the eighty-cent rate will not yield complainant a fair return on its investment, *i. e.,* its present investment plus the investment necessary to enable it to comply with the regulation; and complainant *cannot complain of its unconstitutionality on that ground until it has made the investment necessary to enable it to comply with the provision.*

The Circuit Court said in its opinion that "for changed circumstances, either of production or consumption, there must be new applications for relief; the business of the Court is to deal with circumstances discoverable in the present and by the evidence." Applying that doctrine here, we contend that when complainant has made the investment necessary to enable it to comply with the pressure regulation and has thereby devoted additional property of definite value to the public use, and it should find that the rate prescribed by the statute did not yield it a fair return on its total investment, then, under the "changed circumstances" brought about by its new investment, it might make a new application for relief.

If this Court should, however, find that compliance with such pressure provision is physically and commercially impossible, and is therefore obnoxious to the Constitution, as being legislatively unreasonable, then we contend that the provision is clearly independent and severable.

Candle Power.

The Master reported that, while by complainant's Exhibit No. 94 the cost of gas production in 1905 was fully shown, such cost only covered the expense of enrichment from twenty to twenty-two candle power for the last six months of that year, "while for a full year (there would be required) the addition of 1.83 cents per thousand feet to the cost as stated."

Complainant moved the Court below upon its application for a supplemental expression of opinion, that it might be allowed an additional cost allowance of 1.83 cents per thousand cubic feet to cover the expense of enrichment from twenty to twenty-two candle power for the other six months of the year, contending that 1.83 cents per thousand cubic feet would be necessary for that purpose.

The defendants resisted complainant's motion for the reasons set forth in their brief submitted to the Court, as follows:

The Master reports that the Gas Commission allowed 1.81 per thousand cubic feet "for cost of enrichment due to 22 candle-power law," but that Mr. Addicks claims 1.83. It appears at page 1821 of the testimony that the former figure was based upon Addicks' statement to the Gas Commission.

The complainant does not claim that the 22 candle power was not required by law during the first six months of 1905, just as much as during the last six months of that year. Its present motion refers to the year 1905 as one, "during only the last six months of which complainant was operating under the legislative acts in question *imposing penalties* for each failure to maintain at least 22 candle power"; and the complaint is that the year 1905 cannot therefore be regarded as affording a "basis of a full year's production under said 22 candle power provision as compared with the lower enrichment previously maintained by complainant."

The candle power requirement was just as clear before the legislation of 1905 as it has been since then. In fact, the words used were the same, except that the words "place of manufacture" were used instead of the words "distributing holder." The difference was in the fact that there was no penalty in the original act, whereas a penalty of $1,000 for each offence was inserted in the laws now complained of.

Act of 1897, c. 385, Exhibits, p. 5264.
Act of 1905, c. 736, Exhibits, p. 5262.
Act of 1906, c. 125, Exhibits, p. 5263.

The charter provision as to 20 candle power test and penalty dates also from 1897 (chap. 378, sec. 578), and of course did not repeal the 22 candle power provision in

a subsequent statute of that year; nor did its re-enactment in 1901 in the revised charter so operate.

There appears from the evidence five plants (Testimony, pp. 535-540), where enrichment is necessary in order to reach a required candle power. For each failure at any station, the statute provided a penalty of $1,000 (the total number of customers, exclusive of the City, being 390,000); but the Court has held the penalty void at request of the complainant. If it is void, what ground have we for any inference that the complainant will furnish any better gas than it did before? Why then should the price of gas to the consumer be raised? If the rule by which street car conductors were made to ring up their fares had been held unconstitutional, would it have been necessary to raise their salaries?

It is respectively submitted that every presumption should be entertained against a complainant who puts forward such a ground for a motion to increase the cost of gas to the consumer; and that this is especially the case when it is a matter as to which it is very difficult to get at the truth, and the truth is best known to the company which avows its disobedience to the law.

The most reliable evidence that we can find assists the defendants' contention. It is to be found in the tabulation of actual candle power tests made by the City during the year 1905.

City's Ex., 47, Exhibits, p. 5540.

This exhibit shows that for the first six months, when there were no penalties, the average City test was 22, and that in the second six months, when there were supposed to be penalties, the test showed 24.19. The average for the year is estimated on the exhibit at 23.1. Indeed, the average as between the tests for the first six months and for the tests for the second six months is somewhat higher; but considerably more gas was sold

during the first six months than during the last six months.

Exhibits, pp. 5753-5756.

Such reliable evidence as we have tends to confirm the deduction from the actual City tests. Complainant's Exhibit 93 gives the summary of operations for the year ending October 31, 1905. The manufacturing cost was 32.84. Its Exhibit 94 gives a similar summary for the year ending December 31, 1905. The manufacturing cost was but 32.77. In other words, the difference between November and December, 1904, on the one hand, and November and December, 1905, on the other, was trivial; and such difference as there was showed less cost of production under the 22 candle power penalty regime. If there was really an additional cost of 60 cents or so for enrichment, *it was masked by some new economy which complainant has not thought it wise to confess.*

It was entirely within the power of the complainant to give us a better basis of inferences than an Addicks hypothesis. It could, as was observed on the argument, have supplied the Court with a calculation of manufacturing cost for the year beginning July 1, 1905. It did not complete its direct testimony until September 14, 1906. It might have been inconvenient to make the calculation; but complainant has spared no inconvenience, either to itself or to the other parties, when it saw inconvenience joined with advantage to itself. It did not desire to show its figures for the first year of the 22-candle-power penalty, and it refused to allow its books for the last six months of that year to be looked over. Mr. Addicks' testimony need not be followed.

Chicago & Grand Trunk Ry. Co. *vs.* Wellman, 143 U. S., 339, 343.

The presumption against the party unwilling to show his books, and trying instead to help out his case with opinions of friendly experts, must be applied.

> Sturgus *vs.* Clough, v Wal., 269; quoted in The Conqueror, 166 U. S., 110, 128, 134.

It appearing that during 1905 the average candle power, as actually tested by the City (thus allowing for all loss of candle power in distribution), was more than one point above that required by law, the matter being one so obscure and subject to such difference of opinion, and the complainant being in so inequitable a position, it was respectfully submitted that the Court has properly disregarded the testimony of its experts and presumed that its experience in 1905 is a fair test of what it can do under the legal requirement.

The Court denied the complainant's motion for such an allowance for the reasons set forth in its supplemental opinion, as follows:

> "Complainant now urges that by the Court's treatment of the 'Ten-Cent Item' in the opinion, this cost of additional enrichment has been taken away from it, inasmuch as the Master did not specifically allow said 1.83 per thousand, but permitted it to be included in the ten-cent reserve for future contingencies.
>
> "It also appears that during the last six months of 1905 complainant's gas was maintained at a tested candle power of 24.19, and for the whole year the average was 23.1. Yet complainant declares that inasmuch as the status attacked in this litigation require that 22 candles be maintained not only at the testing stations so long used, but at any point on the line and at all times, it became necessary for it to maintain an initial strength of much more than

22 candles in order to meet the requirements of the law. Upon this, as upon all other points involved in this litigation, the burden of proof is upon it; and for the purposes of this application I must regard the penalty clauses regarding pressure of the acts in question as unconstitutional and void. The question therefore is whether complainant has shown, first, that 1.83 is the certain necessary expense of the required enrichment, and, second, whether remembering the unconstitutionality of the penalty clauses, an average of 23.1 candle power be not sufficient for its purposes and reasonably satisfactory to the law. On both of these points my opinion is adverse to the complainant. I do not think that complainant satisfactorily proved that 1.83 cents was the necessary cost of additional enrichment, and do not think that the average candle power of 1905 will be found sufficient to satisfy both the law and commercial requirements. The complainant's request for modification of the opinion in this regard is denied."

We contend that upon the grounds set forth, *supra*, including those stated in the Court's supplemental opinion, the application for such allowance was properly denied, and that the decision of the Court below, being a decision upon the question of fact purely, should stand.

The lesser rate to the City than to private consumers does not invalidate chapter 736, Laws of 1905.

The Legislature could not, as between private consumers, provide as to one particular class that the rate should be eighty cents and another particular class seventy-five cents per 1,000 cubic feet. But as to the City an entirely different question arises. The lighting of a private residence is for the private convenience of the owner. The lighting of the streets and public buildings

is in the interest of all the public. The lighting of the streets makes for the safety and convenience of all and therefore is within the police power; it is a duty that the City would have to perform did it not permit the complainant to do it. Hence the Legislature could require the complainant to perform the duty on the same terms as the City itself might do it. The complainant uses the public streets to distribute gas to private consumers and earns a profit thereby. If there had been attached, to the right to exercise that privilege, the condition that gas should be sold to the City for its purposes five cents cheaper than to private consumers, it cannot be contended that such a requirement would have been unjust or an unequal condition for the use of public property. If the Legislature could have imposed that condition originally, it can now.

The right to impose burdens for the public good and in favor of the municipality, upon public service corporations, has been repeatedly held constitutional. The recent case in the New York Court of Appeals, Rochester *vs.* Railway Co., 182 N. Y., 99-112, affirmed in 205 U. S., 236, held that under the reserve power in regard to corporation, the police power and the taxing power, the Legislature could compel a street railroad company to keep in repair the pavement between its tracks and for two feet each side, although no obligation rested on other users of the street to do so.

In the case of L. S. & M. S. Ry. *vs.* Smith, 173 U. S., 684, held that the railroad company could not be required to issue one-thousand-mile tickets at a less rate per mile than its schedule, on the ground that it was justified by no public purpose. But the Court in L. S. & M. S. *vs.* Ohio, 173 U. S., 285, held that as public convenience was served by requiring a certain number of trains daily to stop to receive and deliver passengers at towns of a certain size that it was not an unconstitutional regulation.

The discrimination which is repugnant to the Constitution is for the same service to different individuals. A different charge for a different service is not discrimination.

For service to private consumers the complainant has to have meters and maintain a force of meter inspectors and collectors.

The service to the city is in great bulk—it is wholesale against retail delivery.

As far as street lighting is concerned, which is by far the larger item, no meters are used, and no inspectors required, and no collectors have to be employed to collect for the gas sold, and there is no risk of nonpayment; taking these differences between the private and public service it is submitted that an allowance of five cents per thousand is reasonable. (See cases under next subdivision.)

The Legislature having taken all the foregoing reasons into consideration:

"It suffices that it is practical, and is not reviewable, unless palpably arbitrary."

Orient Insurance Co. *vs.* Daggs, 172 U. S., 557, 562.

The failure to limit price in localities other than The City of New York, does not invalidate chapter 125, Laws of 1906.

"The fourteenth amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed or by territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circum-

stances and conditions, both in the privileges conferred and in the liabilities imposed."

Hayes *vs.* Missouri, 120 U. S., 68.

"Class legislation, discriminating against some and favoring others, is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

Barbier *vs.* Connolly, 113 U. S., 27.

"The clause in question means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under like circumstances."

Missouri *vs.* Lewis, 101 U. S., 22.

"Certainly it cannot be claimed that this prevents the State from regulating the fares of hackmen and the charges of draymen in the City of Chicago, unles it does the same thing in every other place within its jurisdiction."

Munn *vs.* Illinois, 94 U. S., 126-135.

Cost Items Which the Court Should Have Rejected.

Item No. 66, *Sub-Item, Tax on Special Franchises,* $406,909.23.

The Court, in its computation of cost for the future, makes complainant an allowance of $406,909.23 on account of operating expenses due to the payment of a tax on its special franchise. It is apparent that if complainant's earnings be reduced by action of the State, an allowance on account of special franchise tax here-

tofore paid, predicated upon the old rate, must be proportionately reduced.

We adopt the argument of counsel for the Public Service Commission with respect thereto, which is as follows:

> "It must be assumed that the franchise tax will be assessed upon the basis which, as between the parties hereto, shall have been adjudicated and fixed by the decree in this suit. The tangible property, excluding the tangible property in the streets, is worth $33,500,000. An income of 6 per cent. on this would be $2,010,000 (see Chicago Union Traction case, 114 Fed. Rep., at p. 561). Subtract this from the 'net income under legislation here attacked' (Opinion,) and we get about $1,225,000 as the income which is the measure of the 'special franchise tax.' Assuming a capitalization of the special franchise at 6 per cent., then the rate of taxation in this city, being 1½ per cent. (Testimony, pp. 1002-1003), we have as the probable franchise tax one-quarter of this income, or $306,250. Correcting these figures to accord with complainant's allegation as to the equalization of assessments (Exhibits, p. 2734), we must reduce them 25 per cent. The special franchise tax will therefore be something below $230,000. (On the basis quoted by the Master, the tax would be about $308,570, but, as above remarked, the rule adopted by this Court would be an adjudication which would doubtless govern). The Court's figures, however, are based upon the assumption that the tax for 1907 will be $406,909.23" (Master's Report).

The method of reducing the franchise tax employed above is in harmony with the method of assessing special franchises for taxation employed by the State Board of Tax Commissioners. The effect of the reduction is sim-

ply to eliminate from complainant's capital account so much of the value of its franchises as is based on its earnings over and above so much thereof as would represent a fair return on its tangible property. it is obvious that if the reduction of rate results in the elimination of all profit except such as would constitute a fair return on complainant's tangible property, then there will be left for assessment and taxation no franchise value whatever predicated upon earnings over and above a fair return on the tangible property, and hence there will be no such value to tax.

It must be assumed by this Court that complainant's special franchise tax will be assessed upon a basis established by the decree in this suit, and hence will not be levied upon any value which shall be eliminated by a decree sustaining the constitutionality of the eighty cents rate fixed by the statute.

Alleged Inconsistency of Taxation of Franchises.

The complainant contends that it is unreasonable to tax this franchise as property, as they have been taxed since 1900 in this State, and refuse to allow complainant a return upon the value of the property so taxed.

It will be seen upon analysis that there is no unreasonableness in our contention in that respect.

In 1905, the year which has been adopted as the test year for the determination of cost (as per Exhibit 94), the company's special franchises were taxed as of the value of $27,300,000, inclusive of the value of certain personal property described in the act authorizing the imposition of the tax (202); and complainant paid thereon a tax of $406,909.23 (Ex. 94), which tax is computed by the Master as an item of cost and so allowed.

The Master assumes that the value of the franchises for that year were determined by the State Board by the

method which he adopted; that is to say, by the capitalization of the complainant's capacity to earn a profit over and above a fair return upon property actually used in its business (204).

The tax was justly levied in that year, upon that principle, and under that law, for complainant's earning capacity under the dollar rate, which it was then permitted to charge, was 25 per cent. greater than it would be under the rate established by the law here challenged.

The tax was levied in a year when the franchise values taxed (predicated upon its *then* earning capacity) existed. The complainant could not be taxed in any sum on account of its special franchises, if the 80-cent gas rate be upheld and its effect be to reduce the earnings of complainant to the margin of a return *only* upon the tangible property used in its business.

The franchise values which existed in 1905 were taxed as of that year, and complainant, as a matter of bookkeeping, entered the tax as an item of gas cost for that year, and the Master and the Court in reviewing the cost of gas for that year, for the purpose of arriving at the probable cost of gas in the future, accepted the tax as a proper item of gas cost.

It should be noted that the inconsistency complained of could relate, in any event, only to the particular year when the franchises were assessed as property and the tax paid thereon, and could have no bearing whatever upon a future year when, if the 80-cent gas rate is upheld, there will be no franchise value to tax, and hence no tax (as an item of gas cost) to pay.

The Court below has neither criticised nor challenged our argument that the inevitable effect of the enactment of a law which fixed a rate of charge that would yield complainant a fair return on the value of its tangible property only, would be to destroy the franchise value

based upon the earning capacity or franchise value determined by the capitalization of the excess profits eliminated. The Court, however, did criticise our contention that the value of complainant's franchises so determined, being so destroyed by regulation, the complainant would not in the future be put to the expense of paying tax thereon. The Court said:

> "As an illustration of the difficulty of the subject, the argument is admirable, but to ask the Court to remove from the operating expenses of the company a tax lawfully laid in pursuance of existing statute, on the ground that a subsequent statute extinguished that upon which the tax operated, notwithstanding that the only apparent effect of the 80-cent tax (gas?) law was to increase the franchise tax, is a considerable demand upon credulity."

The learned Judge refers to the 80-cent tax law when he doubtless intended to refer to the 80-cent gas law, the error being a typographical one.

How the 80-cent gas law can have the effect of increasing the complainant's franchise tax, we are unable to see, for certainly a law which reduces complainant's rate of charge, and hence its earnings, cannot have the effect of increasing the value of its franchises predicated upon the capitalization of those earnings. It may be that the learned Judge's observation is predicated upon an increase in the company's assessment on its franchises by the State Board of Tax Commissioners since the passage of the law, but such an increase could not be in any sense an effect flowing from the enactment of the 80-cent rate law. The franchise taxes assessed on complainant's franchises prior to the enactment of the 80-cent rate law, have been allowed both by the Master and the Court as operating expenses. The State Board of Tax Commissioners were doubtless influenced to increase the amount of their assessment on complainant's franchises in order to con-

serve the interests of the public pending the determination of this litigation and its decision by this Court.

We do not consider it a considerable tax upon credulity to urge upon this Court that the State Board of Tax Commissioners will not continue in the future to assess the company upon franchise values predicated on the earnings under a dollar rate after the State has established an 80-cent rate; that such Board will not continue to levy a tax on complainant's franchises based on the profits realized from the 20 cents per thousand cubic feet which the State has taken away from complainant by the enactment of the "regulating statute." It is reasonable to presume that the State Board will continue to do its duty and follow in the future the method which it has employed in the past for determining the value of complainant's franchises, and that if this Court shall uphold the constitutionality of the 80-cent rate law, and thus eliminate the profits upon which complainant's franchise values are predicated, it will cease to assess a tax on so much of the value of complainant's franchises as the regulatory statute upheld destroyed. If the Board should attempt to levy a tax upon franchise values that had been "eliminated" by a law of the State of New York upheld by this Court, the Court would afford complainant speedy and adequate relief.

Item No. 67—"Contingent Expenses (includes renewals), $1,328,316.37."

(Complainant's Exhibit 94, p. 217.)

The account which this item represents was first opened upon the books of the complainant in May, 1905 (224), during, or at the end of the Stevens legislative investigation into the cost of gas in New York City, which was had in that year (228), for the avowed purpose of determining whether the cost of gas therein, or to complainant, would justify the legislative reduction of the price of gas from the dollar rate then prevailing.

This item, however, was first entered by complainant at a time when it became apparent that it would be compelled to show (contesting the validity of the law reducing its rate of charge) that it could not sell gas at less than $1 per thousand cubic feet and earn a fair return upon its investment in the gas business.

Prior to the Stevens investigation a "depreciation account" was kept, in which "scrapped" articles were set down at book value. Excess in renewals over the "depreciation account" were treated as "additions" or "new construction." There was no distinction made between "current renewals" and "final renewals" (4506-8).

The item amounted to an allowance of ten cents per thousand cubic feet of sales, in addition to the actual expenditures for repairs during 1905, represented by items Nos. 34 and 47 to 52 of Exhibit 94 (which amounted to 5.58 cents per thousand cubic feet of sales), and inclusive of a current replacement charge of 2.12 cents per thousand cubic feet of sales.

The Court rejected the item as found by the Master and substituted a total allowance of 11 cents per thousand cubic feet of sales.

Complainant's Claim.

Mr. Carter, the secretary of complainant, was first questioned with respect to this item during the investigation by the State Commission of Gas and Electricity, held upon the complaint of certain consumers in the winter of 1905-1906, and was subsequently examined with respect to it in this case. He explained the nature of the item, and the reasons for the entry thereof as follows:

> "The account was established out of consideration of the possible contingencies that might at any time arise or would require the employment of such

reserve as we undertook to acquire by that means. I might say that we put into the account such considerations as fluctuation in the cost of material, liability to serious and expensive accidents, having in mind the case of a very grave one which occurred in Boston not long ago, which cost the company there a great deal of money to settle in the way of damages; the possibility of variations in the volume of the business might render the presence of such a fund very serviceable to the company; and many considerations of that sort were canvassed very thoroughly in determining the amount that we should reserve (224-225). I would say, too, that one of the principal considerations, but not necessarily the primary one, that we foresaw the loss incidental to the removal of our plant to Astoria of something approximating $10,000,000, which had to be taken care of. It was one of the purposes for which a portion of that fund would ultimately be used (876).

"Our intent, of course, was to cover by that ten cents such extraordinary loss as the company would sustain in the removal of the plant to Astoria, among other things, as well as to cover the cost of current replacements and renewals that would take place independently of any transfer of the plant to Astoria from New York" (224).

Mr. Addicks, vice-president of the complainant, justified the entry by the explanation that it was to cover

"any minor extensions, renewals on account of extraordinary wear and tear, depreciation not covered by repairs, all supersession, accidents of larger moment than usual, fluctuations in the business, changes in the cost of all materials, and electrolysis and other contingencies" (224).

It became obvious to complainant that, for the purpose of maintaining its cause of action herein, or similar

issues elsewhere, it would have to fortify its explanation of this allowance as an isolated entry, made under circumstances that rebutted its integrity, by expert proof as to the propriety of making the allowance for the reasons advanced by complainant's employees in explanation thereof.

Accordingly it produced Mr. Addicks and Dr. Humphreys, who testified as experts to the proper allowance to be made on account of depreciation and reserve, in order to compute the reasonable cost of the manufacture, distribution and sale of gas in the City of New York.

Definitions of "Final Renewals" and "Reserve."

Complainant's experts defined a "final renewal fund," which definition is adopted by the Master in his report (226), as "a fund in addition to current expenditures for 'repairs and renewals,' such as are embraced in Items 34 and 47 to 52 of Exhibit 94, and the current replacement charge of 2.12 cents per thousand cubic feet included in Item No. 67. It is intended: (a) To cover physical deterioration which has taken place and which has not been met, by current repairs and renewals, and (b) to provide for the loss or displacement of plant, in whole or in part, in the future from any cause" (224).

These experts define "reserve fund," which definition is adopted by the Master (228) "to cover such contingencies as increase in cost of labor and materials, hazards of strikes, damage from electrolysis or by reason of explosion and unforeseen events of any description which may tend to increase the cost of production."

The Allowance of the Experts on Account of "Depreciation" and "Reserve."

Dr. Humphreys deducted from total operating cost, as shown by Exhibit 94, complainant's actual expenditures, on account "of repairs, production and distribution" (5.2.1 cents), and Item 67 (10 cents)—a total of 15.21 cents—and substituted therefor the average of complain-

ant's actual expenditures on account of repairs and renewals for a period of twenty years preceding 1905, which was 7.5858 cents, plus an allowance on account of estimated final renewals in manufacture and distribution of 6.5592 cents—a total of 14.14 cents.

Mr. Addicks, in place of the 10-cent item, added to the item of 5.58 cents, actual repairs and renewals for 1905, 2.12 cents actual replacement (included in 10-cent item), 4.62 cents (the difference between the sum of last two allowances—7.70 cents—and the average expenditure therefor from 1895 to 1899, exclusive—12.31 cents), an allowance for labor of .78 cents, and an allowance for "reserve fund" of 3 cents, making a total for depreciation and reserve of 16.10 cents (231, 232).

The Master's Reasoning.

The Master said ( ):

"I am satisfied that the charge of 10 cents per thousand feet for 'contingent expenses,' including renewals and replacements, as shown by Item 67, is not excessive, but, on the other hand, rather conservative. I have not deemed it necessary to differentiate between the amount to be allowed for final renewals and for contingencies, nor to determine that any fixed amount should be added to the current expenditures for repairs and renewals to bring them up to the average of former years. It is sufficient to say on this subject that the annual expenses for repairs and renewals have been very considerably less per thousand feet since the year 1900 than during the period between 1884 and 1899, inclusive. The renewals for 1903 were $237,576.96, as against $282,219.67 for 1905. With this single exception, the renewal charges for the five years from 1900 to 1904, inclusive, were very considerably larger than for the year 1905. The testimony as to the amount of depreciation now observable in

the plants, or for which allowance should be made in appraising their value, indicates with reasonable certainty that the annual expense for renewals and replacements is likely to be over, rather than under, the 2.12 cents per thousand of the year 1905. This takes into account no extraordinary charge due to abandonment or 'scrapping' of plant, in consequence of anticipated removal at some later date to Astoria."

"As regards the elements to be taken into account in fixing a proper amount of reserve for contingencies, the direct testimony was confined chiefly to the matter of electrolysis. That this is a danger which may be reasonably apprehended is evident from the fact that it has received very considerable attention from electrical experts throughout the country and has been made the subject of special investigations on behalf of interests having capital invested in sub-surface construction. No special damage gas has been shown to have thus far resulted in this City, and the evidence indicates that all possible precautions are being taken to prevent it, and with a reasonable assurance of success. In view, however, of the increasing number of electrical installations now in progress in this city, with currents of unusual power, it canont be wholly disregarded. The danger of explosion is more immediate. Experience has shown that such catastrophies are not at all uncommon in the experience of this and other companies, and may occur without fault of the companies' servants. Under existing conditions, the chance of their occurrence is likely to increase rather than decrease. It is also apparent that, in view of the increasing number of sub-surface structures in New York City, the expenses to which complainant must be subject in the care and maintenance of its mains and connections are likely to in-

crease, and this fact, in connection with the continued rise in the price of labor and materials, indicates strongly the necessity in prudent corporate management for maintaining a reserve in excess of the actual expenditures called for by known requirements."

The Court's Reasoning.

The Court below said ( ):

"This may be conveniently called the 'Ten Cent Item.'

"It is admitted that some allowance must be made for the accidents and contingencies of this, as of any other business; and complainant therefore demands that in addition to treating as permanent disbursements what it actually paid out during the period of inquiry for repairs and renewals to its plant, mains, services and meters, there should be allowed to it a reserve and contingent fund of ten cents per thousand feet of gas sold; or, at the existing price of a dollar a thousand, substantially ten per cent. of its gross income.

"This method of stating the ten per cent. reservation is misleading, and I think unjust to the State. The more gas complainant buys from other companies, the greater its volume of sale; but, as pointed out, the expense of maintenance does not increase *pari passu* with increased sales; and the allowances, if granted at all, should be upon the sale price of the maximum production of complainant's own works. This deduction alone would amount to more than $150,000.

"The nature of this 'ten cent item' may be seen by observing that during 1905 there was actually expended for repairs and renewals, and included in

station and distribution cost, the sum of $685,077.47; and this item is to be considered as a permanent allowance for repairs and renewals, amounting, according to the report, to 5.58 cents for every thousand feet of gas sold, including, of course, the gas purchased from other companies. Yet in addition to this allowance, there is demanded, in permanence, an additional ten cents per unit sold, amounting to $1,328,316.37, to cover the probability of annual repairs and renewals in excess of $685,077.47, and depreciation mediate and ultimate; by which is meant the final replacement of plant and apparatus owing to irreparable decay. This item has been the subject of bitter contest, and after much hesitation I am unable to concur in the report.

"It appears upon a review of sales of gas, and cost of repairs and renewals actually made, between 1885 and 1905, that the average expenditure for such purposes during that time was 10.89 cents per thousand feet of gas sold. Since 1899 the produce of complainant's factories has not been sufficient to satisfy its consumers, and the average, if computed only upon gas manufactured, is somewhat higher, but not over 11 cents per thousand. This average of repairs and renewals has for twenty years been sufficient, not only to maintain the plant in a condition of ordinary excellence, but to enable complainant to-day to make more and better gas than ever before, while owning a better plant than ever. The actual payments for these purposes, have often, as in 1905, fallen far below this average. This shows that the expenditure is not constant; while the retention of the large percentage demanded would be so under the plan urged on the Court.

"There are certainly legitimate and gainful purposes to which temporarily unexpended balances can

be put; and if they are so used an 11 cent reservation on gas manufactured will mean, during the years, much more than 11 cents kept, pending larger demands from the works, without profit from its use.

"Again, the ten cent item may be thus analyzed: In 1905 there was charged to depreciation $282,219.67, while there was expended on new construction $261,264.36, a difference of $339,044.69. Construction represents actual outgo, is chargeable to principal, and must be provided for either by new capital, or—what is the same thing—a capitalization of earnings, or by borrowed money. It is not pretended that, as against a regulatory statute, new construction must be allowed for out of current earnings. Yet under the system of bookkeeping above outlined and shown in the evidence, what happened in 1905 was this: *The $621,264.36 was expended; then a year's depreciation was fixed by estimate at $282,219.67; and that amount of construction expenditure was charged to income as depreciation, and is sought to be covered in this ten cent. allowance.* (Italics ours.) The distinction between depreciation of that kind and new construction seems to me very shadowy.

"On considering the twenty-year average of repairs and renewals, it is observable that the consumption of gas has in that time nearly quadrupled, and the capacity of complainant's own works very largely increased. It follows that the 10.89 percentage, if computed upon the sales for 1885, represents a much smaller sum than does the same percentage on the product of 1905. Yet the number of plants has not increased with increased production. Neither, proportionately, have miles of mains and most other parts of distributing property. Each plant turns out more gas, through interior enlarge-

ment and improved methods of production, and there is nothing in the evidence to compel the belief that the same proportion of repair and renewal expenditures to value of product, existed in 1905 as did in 1885, or that the proportion of earlier years is legitimately to be required in the future. And this is true, although the amount of money lately expended, and to be expended, is much larger than twenty years ago.

"The actual result of this demand, as applied to the facts of 1905, is as follows:

"If the 10 per cent. reserve were computed only on gas manufactured, it amounted to $1,065,781.03 of cash in hand. Of this $282,219.67 passed to depreciation, and was actually used to lessen expenditure for new construction, and the balance of $783,561.36 should have been credited to reserve against future contingencies. This means that if repairs and renewals could be kept at the figure of 1905, and no more be called depreciation than was used to aid in construction in that year, there would be produced without the aid of investment at interest a fund sufficient to reconstruct complainant's entire plant in twenty years.

"No such thing will probably happen, and counsel have argued that this apparent surplus is prospectively dissipated by future increased expenses, and losses of many kinds. The constant rise in the price of most materials and most kinds of labor is something of which even judicial cognizance may be taken, but this inquiry is solely into the reasonableness, and therefore the legality, of the regulatory action in 1906. It is not to be presumed that if circumstances change the regulation will remain unchanged. And if such a regulation does remain unchanged, there is nothing in the law as developed

down to this time to prevent application to the Courts, years after the passage of the regulative statute, upon the ground that what was just when the statute was passed has become unjust by lapse of time and change of circumstances.

"As to future losses of a kind not known in the past, such may well be encountered; it is said, probably with truth, that the crowded condition of underground New York increases for the future the danger of explosion, and introduces a new peril in electrolysis resulting from the multiplication of underground electric currents. These are dangers possible; so, somewhat more remotely, are lightning and earthquake. *But it cannot be said, as matter of law, that a corporation, even as against its shareholders, has the right to horde income for the sake of maintaining dividends in years when extraordinary disasters may occur* (italics ours). If a prosperous private corporation chooses to set aside for such contingencies an annual fund of 10 per cent. of gross earnings, discontented minority stockholders might not be able to coerce the discretion of the directors by judicial proceedings, but their complaint would be entitled to a hearing, and the alleged abuse of discretion strictly inquired into. The case of the company or its directors is far weaker where the endeavor is *to capitalize a large proportion of yearly earnings against the undoubted regulatory power of the State* (italics ours).

"I am of the opinion that some such capitalization of income is proper, but can it be said in this case that a 10 per cent. reserve is so universally or even generally approved in manufacturing circles, so necessary for this corporation in the light of its past history, and so clearly shown to be all these things by the evidence herein, as to require the

Court to uphold the claim and accordingly seek to limit the regulatory power?

"In my view the statement of this proposition is a sufficient answer to it, and I find that complainant has not sustained the burden of showing the general acceptance and reasonable necessity, and therefore the legality, of the reserve demanded.

"An allowance of eleven cents per thousand feet on the maximum production of complainant's own works to cover repairs, renewals and depreciation mediate and ultimate is in my judgment sufficient."

"Astoria, etc., Capital Invested, Gas Purchased from Other Companies."

In the Master's statement, reporting the property upon which the company is entitled to a return, appears an item of $12,000,000, on account of "capital invested in the production of gas secured from other companies" (247).

It will be noted that the item does not represent capital invested in gas production by the complainant or property devoted to the public use by complainant, but purports to represent "capital invested in gas production by other companies." Such an allowance is *prima facie* not justified by the rule, and should not be confirmed except after close scrutiny of the reasons by which the Master seeks to justify it.

The defendant objected to the allowance of this item upon the grounds following:

First—That the property of the Astoria Company was not the property of the complainant; and,

Second—That the property of the Astoria Company has never been, and is not now, devoted to the public use.

To the first objection of defendants, that an investment in gas property by the Astoria Company was not an in-

vestment in gas property by complainant, the Master answered that "there would seem to be no ground, for the purposes of the present inquiry, for drawing any distinction between a plant built and operated directly by the complainant, and one built and operated by a subsidiary corporation of which it owned the entire capital stock; no reason is apparent why the capital invested in the plant of such subsidiary corporation is not to be treated precisely as if invested in any of the manufacturing stations of complainant on Manhattan Island" (183).

Apparently it did not occur to the Master that complainant was only a holder of, or investor in, the stock of the Astoria Company, entitled to such dividends upon its holdings as the Astoria Company might declare, and that complainant might, at any time, dispose of a part or all of its holdings; that, in contemplation of law, the Astoria Company was as much an independent corporate entity as the Consolidated Company, and as such entitled to earn a fair return upon the property devoted by it to the public use, whether in the manufacture or distribution of gas, or both.

The defendants objected to the allowance of the Astoria item upon the second ground, that, even if the investment of the Astoria Company in gas property was, in law, an investment of the Consolidated Company, the gas property itself has never been, and is not now, devoted to the public use; that is to say, never has, and does not now, manufacture or distribute gas (183).

The Master justified his overruling of this objection as follows:

> "The second objection suggests a question which requires a consideration of complainant's relations with other gas companies in The City of New York whose product forms a part of its annual output. The complainant owns about 99 per cent. of the

capital stock of the New Amsterdam Gas Company, about 51 per cent. of that of the New York Mutual Gas Light Company, and about 92 per cent. of that of the Standard Gas Light Company, which it carried upon its books at the respective valuations below stated:

"New Amsterdam Gas Company.	$4,814,608 03
"New York Mutual Gas Light Company	5,703,290 65
"Standard Gas Light Company..	14,587,495 23

"All of the above companies operate in the Borough of Manhattan. The Central Union Gas Company and Northern Union Gas Company, operating in the Borough of The Bronx, are owned or controlled by the New Amsterdam Gas Company, which holds the entire capital stock of the former and about 56 per cent. of the stock of the latter. These five corporations and complainant comprise all the companies engaged in the manufacture of gas in the Boroughs of Manhattan and The Bronx. For some time past it has been the custom of the complainant to obtain gas from certain of these corporations, which is delivered into the holders or mains of complainant in any part of the city as it may be required. The gas so delivered is measured as furnished, and paid for in due course under the terms of certain so-called agency agreements, generally similar in their terms, which have been placed in evidence. In the case of the New York Mutual Gas Light Company, for example, the agreement provides that the complainant employs the latter company as its agent 'to manufacture, purchase and deliver to it for the term of five years such illuminating gas and illuminating power required by the laws of the State of New York as it may require during each year for the said term of five years, estimated to be equal to at least 100,000,000 cubic

feet per year, and to deliver the same to the gas holders, mains or meters of the Consolidated Gas Company of New York in such quantities and at such times as may be reasonably required by it.'

"The agreement further provides as follows:

"'II. The New York Mutual Gas Light Com- shall, as agent for the Consolidated Gas Company of New York and at reasonable rates purchase all the constituent materials and furnish the labor necessary to such manufacture production and delivery, and employ in such manufacture, production and delivery its own plant and appliances.

"'III. At the expiration of each month, the New York Mutual Gas Light Company shall render to the Consolidated Gas Company of New York an account of all expenditures for constituent materials and labor made by it as aforesaid during such month, and the Consolidated Gas Company of New York agrees to pay to the New York Mutual Gas Light Company, within ten (10) days thereafter the amount due, according to such accounts, together with an additional ten per cent. (10%) thereof, which shall be in full for its services and the use of its plant and appliances during the said month.'

"The gas purchased under the above arrangement for the nominal year ending October 31, 1905, aggregated, approximately, 3,000,000,000 feet. The entire sales of complainant for the year 1905 aggregated 13,283,000,000 feet, so that the amount purchased constituted about 22 per cent. of complainant's entire output.

"In estimating the amount of capital invested in gas manufacture upon which complainant is entitled to a return, the capital required for the production of this 3,000,000,000 feet of gas has not been specifi-

cally appraised by any of the witnesses and manifestly is not susceptible of exact determination. *Obviously, however, it must be taken into account in some form, for the complainant is quite as much entitled to a return upon its capital employed in the purchase and distribution of gas made by some outside company as on capital employed in the manufacture of gas at its own works.* The relations of complainant with the companies in question are entirely different from its relations with the Astoria Company and National Coal and Coke Company, of which it owns the entire stock. While it holds the practical control, it does not own them in a legal sense, and, in the case of the New York Mutual Gas Light Company, there is a very substantial outstanding minority interest.

"The producing capacity of the first Astoria unit (20,000,000 feet per day), is equivalent to 4,000,000,000 feet per annum, or about 1,000,000,000 feet more than the gas actually purchased from these companies during 1905. The maximum daily output of complainant during 1905 was about 70,000,000 cubic feet, while the maximum capacity of its own plants was but 51,000,000 feet. Adding to this the maximum capacity of the first Astoria unit would give a maximum daily capacity of 71,000,000, or only 1,000,000 more than complainant's maximum daily output. This surplus, according to the testimony of Mr. Bradley, which was uncontradicted, is insufficient for purposes of a reserve. He stated that, in his opinion, it was not safe to operate gas plants for lighting large cities like New York with less than 20 per cent. reserve of their manufacturing capacity.

"Furthermore, with an output so closely approximating the maximum daily capacity, it is clear that no allowance is made for increased sales of gas con-

sequent on the growth of population. That such increase is to be naturally expected is conceded by all parties. It appears, therefore, that the amount of gas to be produced by the first unit of the Astoria plant is under, rather than over, what was actually required in addition to complainant's own output to meet the reasonable demands of its business in 1905.

"In default of any better method of estimating the amount of capital employed in the production of the 3,000,000,000 feet of gas purchased by complainant in 1905, it seems entirely proper to measure it by the standard of the known cost of the Astoria first unit. Equipped as it is with the most modern machinery and located on a site much less expensive than could be procured on Manhattan Island, the cost of the first unit seems a perfectly fair and safe basis of valuation. Mr. Marks concedes the propriety of an allowance for the cost of producing the gas purchased in 1905, and admitted that it made no difference whether the source of the gas so purchased was located in other Manhattan plants or in Astoria. He computed its value at $5,096,000 on an assumed cost of only $1.78 per thousand cubic feet of annual capacity, but this would appear to be inadequate. The testimony of other witnesses indicates that a coal gas plant would cost more than double that amount to construct.

"I, therefore, allow Item No. 8 as claimed by complainant, although, as the Astoria plant was not in operation and delivering gas in 1905, such item should, for the sake of accuracy, be designated as "Property of other companies employed in the production of gas delivered by them to the complainant."

The learned Circuit Judge, passing upon defendants' objections to this allowance, said:

"Complainant therefore claims that * * * the Astoria Company will be no more than a gas

plant capable of supplying it with what it has hitherto been obliged to buy from others, therefore both (it) should be here regarded as much a part of complainant's assets as any retort or holder of its plant.

"To me it is clear that this procedure is without warrant of law. Complainant does not employ in its gas manufacturing business a single tool of the coal and coke company, nor a single machine of the Astoria Company. Its investment in those companies is represented legally by so many certificates of stock; its relation to them is that of a stockholder only; each is bound by law to maintain a separate existence and conduct a separate business.

"The argument *ab inconvenienti* is often strong, and it has been inquired here, why should complainant be bound to go through the idle form of taking money out of one pocket merely to put it in another, and treating (for example) the Astoria Company as an independent organization, when it really is not. The sufficient answer to this argument is that the law does not permit this species of convenience, and while it still does permit the existence of many controlled corporations, it is highly necessary for the proper investigations and possible regulation of all corporations affected by a public use or engaged in interstate commerce, that the affairs of the controlling and controlled organizations shall be kept distinct. And just what complainant, doubtless, from very good business motives, is endeavoring here to have recognized by the Court is in my judgment plainly against public policy.

"In the case of the Astoria Company it is also, I think, a sufficient answer to the capitalization proposed that there was no such company actually doing

any business during the period inquired into. It had a legal existence, and the complainant was in effect subscribing to its stock, but it had no manufacturing agreement with complainant, and was an enterprise incomplete and merely projected.

"Further, there is no better reason for this suggested capitalization than there would have been had the Astoria plant never been planned, and complainant looked forward to permanent purchases from its other controlled corporations. In the New Amsterdam Gas Company complainant is almost the only shareholder, and from that corporation much of complainant's extra gas was obtained. It might just as well be asked that some portion of the plant of the New Amsterdam Company (*i. e.*, that part which by hypothesis was sufficient to manufacture the gas sold by it to complainant) should be capitalized, as representing something upon which complainant was entitled to a fair return from its gas manufacturing and distributing business.

"Because, therefore, the proposed capitalization of the two items now under consideration is contrary to law, is not, in the case of the Astoria Company, based upon any actually existing investment at the time of the inquiry, and because it is misleading, in not truly stating the facts; these capital items are excluded."

The Court accordingly eliminated the item of $12,000,000 on account of "capital invested, gas purchased from other companies," but charged complainant, in computation of its gross and net earnings for the year 1905, with the profit that it had made from the sale of gas purchased from other companies, which the Court found amounted to $1,865,717.43.

The complainant contended, conceding that its profits from the sale of purchased gas in 1905 were in the

amount stated, that such profit was not normal profit, *i. e.*, that it had no reasonable expectation of being able to continue in the future to purchase gas from the controlled companies under the terms of the agency agreements, and it asked the Court to charge it only such profits as it might *normally* expect to realize in the future.

The Court, conceding complainant's contention (see Decree), assented to its request, and eliminated *as such* the item of complainant's profit from the sale of purchased gas, or $1,865,717.43, as not being a *normal profit* which complainant expected or could reasonably expect to continue to make, but substituted therefor the same amount as a *normal* profit which complainant expected and could reasonably expect to make from the estimated increase in its sales of gas to be manufactured by its Astoria first unit.

The complainant urged, on the hearing of its application to the Court for a supplemental expression of opinion, that accepting the view of the Court that the Astoria enterprise must be regarded as an independent legal entity, the assumed cost of gas at Astoria is much too small, or, what is the same thing, the profits derivable from the Astoria investment are grossly overstated.

The learned Circuit Judge, discussing this contention in his supplemental opinion, said:

> "The inquiry is preliminary and important—if it was not expected that Astoria would furnish gas at lower rates than either complainant's own Manhattan factories or those of its controlled companies, why was Astoria built? For so far as the capacity of the first unit is concerned, it is also clear that the productive capacity of existing plants owned or controlled would have furnished the additional gas needed.
>
> "Yet it was deemed advisable, and could have only been advisable if profitable in expectation—to

borrow $12,000,000 at 6 per cent. in order to put up the Astoria plant.

"To restate the problem, adopting in part complainant's present figures: If the annual capacity (four billion feet) of Astoria first unit were sold at a dollar per thousand, gross sales would amount to $4,000,000. If the cost of production at holder be 32 cents per thousand, such cost annually would amount to $1,280,000.

"Interest on price of plant at 6 per cent. would amount to $720,000, leaving $2,000,000 for profit and general expenses.

"Repairs to apparatus, buildings, tools and implements are included in holder cost; if Astoria sold its entire produce to complainant, the expense of distributing three billion feet annually is already included in cost of gas to complainant as allowed by the Master and the Court, and there is no evidence requiring the belief that the distribution of a billion feet more would appreciably increase such distribution expense.

"It is asserted in the opinion (in effect) that whereas from the purchase at about 34 cents and sale at a dollar, of three billion feet of gas, complainant in 1905 reaped a net profit of $1,865,717.43, it is the Court's belief that the sale of four billion feet procured from the Astoria plant, would yield as large a net profit.

"As shown above, such net profit is $2,000,000, subject to deduction for general expenses and taxes.

"In other words, there is a difference between the probable profit charged against complainant in the opinion, and the $2,000,000 above stated of $134,282.57, and the real question raised by the application now made is whether this sum is sufficient to

cover the taxes and general expenses of a controlled corporation which has but one customer, distributes no gas, and requires no actively employed officials other than those directly concerned with manufacturing.

"The estimated annual taxes of the Astoria Company are $90,000, and the question then remains whether some $44,000 be a sufficient annual reservation to pay general expenses. It is to be remembered that the plant is new, that the repair items already included in holder cost of gas ought not for some years to be as large as they normally are in older establishments; and that the Court is not required to decide what is legally fair for all time, but only for the present, and some reasonable period of the immediate future. I can only reiterate my belief, after a painstaking reading of complainant's able argument, that unless the expectation of the builders of Astoria be falsified, the sale of four billion feet derived from that plant will yield as large a profit as did the sale of three billion feet purchased in 1905. If such expectation be not realized under careful management, there must be a new application. The Court is bound to apply to the conditions of 1906 not only the facts of that time, but the reasonable expectations then entertained and expressed by men of business sagacity; and while it is impossible to assert that the fears expressed by complainant and reproduced in the figures submitted in argument may not come true, complainant cannot expect any Court to hold back the hand of the Legislature because of fears of what the future may bring forth."

Plant (Further Details).

Antiquated Apparatus.

An instance of antiquated apparatus is the benches in the coal gas plants which are of old type of six retorts

tc the bench, called "sixes," except in Forty-second street there are twenty benches of "sevens"; those of the Fourteenth street plant are "direct fire." That is, the retorts which hold the coal are heated by direct contact with the fire from the furnace, while some of the Fourteenth street are quarter depth, some are half depth and three are full depth. In these the furnace fire is farther removed from the retort and the retort is heated by the combustion of the gases from the furnace, while in Forty-second street there is one range of twenty benches of "sevens" and forty benches of "sixes," which are the modern type of full depth regenerative benches, that is have "recuperative flues to heat the secondary air required for the combustion in the benches * * * with the same amount of fuel you can carbonize a greater amount of coal" (1453). Mr. Mayer said: "If I were going to build a coal gas plant to-day of a capacity of 9,500,000 cubic feet per day I would not reproduce this identical plant" (1469). "I would not manufacture a bench without regenerative furnaces" (1472). "If I would build a plant for the total capacity at once I would put up larger benches. If a plant of this size I would put in benches of 9's." 1457.)

Another striking instance is the reproduction of the brick and brown-stone building used to enclose two gas holders at the Eighteenth street station. When gas plants were first built it was supposed that the holders had to be protected from the elements, but fifty or more years ago it was found that if a gas holder was kept painted it was not affected by exposure to weather, and they ceased to enclose the holders. One of these relics of antiquity was still in existence at the Eighteenth street station, and Mr. Mayer carries that into his appraisal as worth $169,328 without depreciation; $155,784 with depreciation. "It is an old construction that would not be carried out in these days," he says, but "the building is there and contains the holders, and the holders are dis-

tributing holders. Q. You say a holder will last forever if left exposed to the elements. Then what necessity is there for enclosing it in a brownstone front? A. I would not build it to-day, but it was built in the days when they considered it necessary to have a building around it to protect it" (1556-1557), and on redirect examination he testified: "Q. Is that form of construction, enclosing holders in a building, in use anywhere to-day? A. No, I believe it has been universally abandoned, even in severer climates." (1644.)

And this absolutely worthless building was given a value as of to-day of $155,784, and complainant's assets on which it was entitled to earn a return were increased thereby. This item is illuminating in another way, and has a direct bearing on the trustworthiness of Mayer's valuation. This building was taken over at the time of consolidation in 1884, and was then valued at $45,241. Mr. Mayer says that this building, which is absolutely worthless in a gas plant, is worth, after twenty-two years' use, $110,543 more than it was then. In other words, it should be charged against the consumer of to-day at an advance of 344 1-3 per cent.

This is characteristic of the entire appraisal.

Abandoned Plant and Apparatus.

The unfairness and unreliability of Mr. Mayer's appraisal is further shown in his treatment of abandoned plant and apparatus.

In regard to the One Hundred and Eleventh street station on direct examination he gave the values to be: Buildings, $107,981; apparatus, $103,446; holders, $704,737; connections, $27,068; 5 per cent. engineering charge on buildings, apparatus and connections, $11,924; 5 per cent. interest charge on same, $12,520; on holders 5 per cent. engineering charge, $35,236, and 5 per cent. interest $36,998, making a total of $1,039,910, and the Master allows this value.

On cross-examination he gave the generator house, $18,307 without depreciation; $9,154 with depreciation. "That house was in bad condition and it would have required just that amount to fix it up and put it in proper condition. I do not know when that generator house was erected, but it required an entire new roof to put it in good condition." Retort house, $50,499 without depreciation, $37,874. (1578), and he gave the contents of these two houses as follows: Retort house: one stack, sixteen benches, six retorts, $70,720 without depreciation, $53,040 with depreciation. One stack, five benches of five retorts, $20,000 without depreciation, $14,000 with depreciation. "Q. Are those retorts in use to-day. A. They were not when I examined the plant, no, sir. It is an old coal gas works near the river side. They were not being used when I examined the plant, but these benches were all new, had just been rebuilt. I don't know when. Q. Still you crossed 25 per cent. off for depreciation, A. The arches were old and the iron work was old. These benches can be operated at any time. Q. But they were not being operated? A. Not when I examined the plant. They were all ready to be fired, but I don't think they had a fire in them. Q. And you don't think they had a fire in them for a number of years, do you? A. I don't think that they did. Q. You know as a fact that this plant is not used as an operating plant by the Consolidated Gas Company? A. Yes, sir, it is used as an operating plant.

By Mr. Matthewson: Q. You mean as a manufacturing plant? A. I mean as a manufacturing plant, yes, sir.

By Mr. Page: Q. But it could be operated if necessary? A. Yes, sir, at any time. Q. What is the capacity of the plant? A. In these benches could be produced a total of 2,420,000 cubic feet of coal gas."

When questioned as to further apparatus he gave an atmospheric condenser, $5,926 without depreciation,

$4,444 with depreciation oil tank, $3,105 without depreciation, $1,652 with depreciation. "Q. Is there any further apparatus? A. No, sir, that is all. Q. There is no purifying apparatus is there for this plant? A. No, sir, nothing of any kind. The gas would have to be purified at some other station. Q. What else is there that would have to be cared for at some other station? A. Everything except one condenser, one atmospheric condenser. Q. Then this plant could not be operated, could it, as a manufacturing plant? A. Except with some other plant not by itself, no. Q. How could you operate it with some other plant? A. By pumping the gas to some other station and purifying and condensing it there. Q. That is pumping it as it comes from the benches? A. Yes, sir. Q. Would that be a practical operation? A. No; it would answer in a case of necessity only. Q. Then, as a matter of fact, these are abandoned works, aren't they, and dismantled, aren't they, partially? A. Practically, yes (1580-1582). Q. How about connections running from this old abandoned retort house? Are any of those included? A. There are none included because there are no exhausters to take the gas away from the retort house. There is no other plant to which there is any connection" (1583).

And he reluctantly admitted that if this was to be used as a distributing station you could do away with buildings and apparatus valued by him at $121,942, with depreciation (1582).

Mr. Mayer at first said the retorts were not in use when he examined them, they were all ready to be fired, but he didn't think they had a fire in them. It was used as a manufacturing plant, and can be operated at any time, and then when cornered, by it appearing that there was no condensing or purifying apparatus, he made the matter worse by saying that the gas would have to be pumped to some other station, and then had

to admit that that was not a practical operation, and that there was no connection with any other station. And then was forced to admit that this manufacturing plant that could be operated at any time was a dismantled and abandoned plant.

As a matter of fact, and Mayer knew it from the first, the city had condemned a portion of this plant and rendered it useless as an operating station, and it had been abandoned.

The complainant petitioned for a reduction of taxation on this block in 1903 and 1905, and stated in the petitions: "This lot is occupied by works of the company which have been rendered useless, as the city has condemned the land in the block above, on which a part of the same system of works was located. Accordingly, this land no longer has a value as a gas plant and would not sell for more than the value of the land as vacant property." (2711, 2714.)

Bradley testified that this plant had been taken by the city and that no gas was produced there (1983), and yet the Master refused to reject the manufacturing portion of the One Hundred and Eleventh street plant, on the ground that it had not been shown to be abandoned, and included Mayer's total valuation of this plant, $1,039,910, whereas he should have eliminated therefrom, buildings, $61,923, 5 per cent. engineering, $3,096.15, 5 per cent. interest, $3,250.96; apparatus, $83,136, 5 per cent. engineering, $4,056.80, 5 per cent. interest, $4,164.64, making a total of $159,627.55.

The statements of counsel in the arguments that gas could be taken from the benches and condensed and purified at another station were equally disingenuous. The gas as it comes from the benches is hot, and it is cooled (condensed) for the purpose of precipitating the tar. If it were piped to any substantial distance it would cool in the pipes and they would become clogged with the tar.

The statement that these are reserve works is not founded in any testimony, and counsel's statement that Mr. Bradley testified that a 20 per cent. reserve should be maintained is an absolute perversion of the testimony. It is good gas engineering, when you build a plant, to allow in excess of the required capacity 20 per cent. in the generating apparatus, so that if there should be a breakdown in a portion of that apparatus you could draw on the reserve, but no one would think of carrying an entire plant idle as a reserve; the more rapid depreciation of a manufacturing plant, when it is idle, is a sufficient deterrent.

Mr. Matthewson forgot that he had himself stated in this argument that at the time of the consolidation the Knickerbocker plant was so large that the Harlem plant (One Hundred and Eleventh street) was closed down. If this plant was carried as a reserve, why had it not been operated instead of buying the gas; the capacity of this plant, 2,420,000 cubic feet, would have practically produced the gas they bought. If the court would view these premises, the absolute unfairness of any claim of the complainants to have this plant valued would appear. We request that the court do this in order that it may not be misled as was the Master by complainants' counsel's smooth and plausible misstatement of a patent fact.

Eighteenth street station. Mr. Mayer states that the Eighteenth street station is not now in use as an operating plant, and that building and apparatus that he testified to on his examination in chief, except the valve-house, several holders, the boiler-house and the exhauster-house, are the remnants of a manufacturing plant. (1555.) He gives a total value to buildings excluding engineering and interest charges, $218,907. (1560.) This includes the brick building for holder, heretofore discussed, valued at $155,784 (1556) and for coal storage, $18,357 (1558, 1559), making a total of

$174,141 which should be deducted. The other apparatus, he says, is all needed for the distributing plant. The Master has allowed the full value given by Mayer, with the addition of the engineering and interest charges at $588,873.

Objection was made and exceptions duly taken. There should be excluded on buildings, $174,141, engineering charge 10 per cent., $17,414.10, interest charge, $9,577.75, making a total of $201,132.85.

Forty-second street station. Mr. Mayer testified: "In retort house No. 4, four benches of sixes, I found that all the settings had been torn out, and on my second visit I found that new settings had been delivered at the grounds and they were going to put them in; they were getting the arches ready for repairs. I thought at first they had been abandoned." (1460-1461.) His first suspicion would seem to have been well founded. For when Mr. Edgerton visited the works six or eight months later, he testified: "I noticed that there had not been anything done there toward doing the setting, and I thought if they had not done it up to that time, they were possibly reconsidering it. I made no allowance in that case. I saw it was not done, and if they had the material when Mr. Mayer was there, it was still there, and what material I saw piled up in the empty arches has not anything to do with that setting at all." (5349, 5350.)

These benches were valued by Mayer at $3,325 per bench (1452), making $13,300, which should be excluded.

Forty-fourth street station. This station manufactures water gas, altered long ago from a coal gas station. There is a retort house with ten benches of sixes back to back, which makes twenty benches, $44,200, without depreciation $39,780. Mayer's testimony with reference to these benches is illuminating, showing his

earnest desire to swell the total valuation, and is in part as follows: Q. Those are coal gas benches, are they not?. A. Yes, they were entirely reset in 1896. Q. But they are water gas stations; they don't manufacture any coal gas, do they? A. They can use these benches for the production of oil gas, the same as the Twenty-first street station. Q. Well do they? A. They did not do it at the time I examined the plant, but I presume they do it in the winter time to get up their candle power. Q. Candle power of what gas? A. Of their water gas. Q. Do you mean to say that you would enrich the water gas—A. (Interrupting) mixture of water gas and coal gas; this gas may be taken from the Forty-second street works. Q. Is it arranged now for use as an oil gas generator? A. Yes. Q. There is no difference in the retorts that would be used for the production of oil gas and those that would be used for the production of coal gas? A. It is absolutely the same retort. All you have to do is put a pipe inside of it, vaporize it, and turn it out in the shape of gas instead of coal. Q. Is there any evidence of this having been done for that purpose? A. I do not recall that exactly. It was not in use when I was there. (1527-1528.)

There is absolutely no evidence in this case that any oil gas is made or ever has been made at this station. If the court will refer to Mr. Bradley's testimony as to the method of the manufacture of water gas (150-154), the utter absurdity of Mr. Mayer's suggestion that they used these retorts to enrich their water gas in winter will become evident. If Mayer had dealt honestly with the court, he would have stated the fact as it was, that these twenty benches of retorts were a portion of the abandoned coal gas plant.

Therefore, there should be deducted from his valuation $39,780.

We also find a Pelouze & Audouin condenser, which can only be used for coal gas. Mr. Mayer says: "I pre-

sume it is only used in the winter time when they are making coal gas." (1523.) Since he had to admit that they didn't make coal gas and shifted to a possibility of oil gas, this old Pelouze & Audouin condenser is useful for only one purpose, to clearly demonstrate that these are the relics of an abandoned coal gas plant still remaining at this station. How much of the apparatus which is included in Mayer's appraisal belongs to this class he would not, and we cannot, say. But this type of condenser could not be dressed up by Mayer as water gas apparatus and should be excluded. Value, $1,260 without depreciation, $1,197 with depreciation. Therefore, at least the following should be deducted from the appraisal: Retort house, $58,408 (1516); 10 per cent. engineering, $5,840.80; 5 per cent. interest, $3,212.44 (1518); benches, $39,780; condenser, $1,197, 10 per cent. engineering, $4,097.70, 5 per cent. interest, $2,253.73, making a total of $114,789.67.

Ninety-ninth street station. This also is a water gas station, but we find Mr. Mayer giving a value of reproduction of eleven through benches of sixes back to back, making twenty-two benches, $43,758. These benches are just being rebuilt with all the new material on the ground. They are in a state of repair now, and will be finished before the fall. (1549.) Six months or more later Dr. Marks finds these eleven benches double length retorts not used, six vacant arches in this stack (5084). Coal gas benches are of no more use in a water gas station than is a steam whistle on a water wheel. There should be deducted from the appraisal $43,758. Unfortunately, the retort house is not appraised separately, but is given with a number of smaller buildings (1535), but as the number of benches are practically the same as in Forty-fourth street, there ten, here eleven, if we assume the same value here as for the Forty-fourth street retort house, it will certainly be fair to complainant, $58,408.

At this plant we find another attempt by Mayer to value old abandoned apparatus, which, when discovered, he fought valiantly to retain, although the amount was comparatively insignificant, $1,485 with depreciation. On his schedule were two hydrogen scrubbers marked "(out of commission)" which he explained to mean "They are not used at the present time." There are a great many apparatus which are not used at the present time because the production of the amount of gas at the present time does not require it.

Mr. Matthewson: Summer production; that has been gone all over." (1546.) First he admitted that the hydrogen scrubber was a part of the old Tessa du Motay plant, in which the hydrogen gas was manufactured separately and enriched, like coal gas, with the oil gas, whereas now the hydrogen and oil gas are manufactured as one process (p. 1606) to make the carburetted water gas. But he says they could use it. He presumed they did when they make the full amount of gas. When asked to calculate the scrubbing surface of the scrubbers, leaving out those two hydrogen scrubbers, after making several erroneous calculations, he found that there was sufficient scrubbers without these to take care of the maximum output of the plant. (1606-1611.) He is still in doubt, but no one else is; these two scrubbers were a part of the old water gas plant which had been removed and were honestly entered on his schedules as out of commission. These should be $43,758 scrubbers, $1,485, 10 per cent. engineering, $5,840.80, 5 per cent. interest, $3,212.44; benches, $43,758, scrubbers, $1,485, 10 per cent. engineering, $4,524.20, 5 per cent. interest, $2,488.36, or a total of $119,716.90.

Inwood station. Mr. Mayer reproduces a little abandoned holder at Inwood of 60,000 cubic fet capacity. Valuation of entire station, $26,173. No gas is sent through this holder. Mr. Oscar H. Fogg who had charge of the regulation of pressure for the complainant,

says: That no gas comes from the Inwood holder. "I have seen an old frame holder there; I don't know whether the holder is in the tank or not (6217). Prof. Marks states: "Holder not in use (boarded tank), counter weights taken off." (5103.) This station should be excluded; so small a holder would be of no service under the present condition, and then it has actually been abandoned. Therefore, the further sum of $26,173 should be deducted.

In Mayer's appraisal and in the Master's and the Court's allowance there should be deducted for abandoned plant as follows:

111th street	$159,627 55
18th street	201,132 85
42d street	13,300 00
44th street	114,789 00
99th street	119,716 00
Inwood	26,173 00
	$634,739 97

No Allowance for Obsolete Type.

Mr. Mayer testified:

Q. Now, as I understand you, in examining the Fourteenth and Forty-second street plants, for instance, you did not take into consideration whether they were commercially or economically worth replacing, did you? A. No, sir; I only figured on what I found there. Q. That is, what it would cost to reproduce that apparatus, whether or not it was commercially and economically an apparatus that would be built to-day? A. I paid no attention to that whatever. Q. And did you take into consideration whether gas could be produced at those particular plants at $1.50 or 50 cents per thousand cubic feet? A. I did not consider it at all, because it had no

bearing whatever on the apparatus as I found them. Q. As you valued it? A. As I valued it. Q. Now, where a plant was of an old type, which, owing to the advance in the science of gas engineering, would not be built to-day, did you allow anything for depreciation by reason of that fact? A. No, sir. (1605.) Q. You stated that in going through these plants you observed that they were operating efficiently. What did you mean by that? That they were making gas? A. That they were making gas without any apparent difficulty, in the ordinary manner in which it should be produced * * * Q. You did not take into consideration the amount produced of gas per pound of fuel used, or anything of that sort that would go into the cost of operation, did you? A. I did not examine operating results at all. (1561.) When questioned about three Rowland engines at Twenty-first street station, he said: Q. Do you know how old those engines are? A. No, sir, but they are in perfect condition. Wherever I find a machine in perfect condition and up to date in operation—Q. No matter what its age is? A. No, I don't care what its age is. Q. Nor do you care what the type may be? A. No, not as far as the condition is concerned. Of course the type has a bearing upon valuation (1506-1507), and again—Q. Is it your idea that gas making machinery by use enhances in value? A. Some of them do. Q. What particular part of the gas machinery becomes more valuable by use? * * * We are talking about the coal gas stations? A. You want nothing but new engines, exhausters and apparatus of that kind. Those which have moving parts, they are better operated after they have been submitted to some wear and tear and have the proper bearings and do not heat and do not bind. * * * Q. But if it has run for a few weeks and has "found itself," as they express it, I believe, does it continue to increase in value? A. No, it does not increase in value, but it maintains its value (1468-1469). Q. If it should appear that this very apparatus cost the company very much less than

these estimates which you have given, would you change your estimate or your appraisal at all? A. No, I would not. Q. Why not? A. My estimates are based upon my own personal knowledge of these matters for a good many years, and therefore I cannot be wrong. I am not attempting to find the capital of the company that was invested in the plant, but what some one would have to pay if they got me to build an exact duplicate of the plant as it exists to-day. If I were going to build a coal gas plant to-day of a capacity of 100,500,000 cubic feet per day, I would not reproduce this identical plant. I do not know how much of this plant came to the Consolidated Gas Company at the time of its consolidation in 1884. I do not know what particular portions of the plant have been added since that time. That is, I mean to say, I do not know at the present time. I have been figuring on the work myself for some years, but I cannot state just now what they are. In making this appraisal I did not state the actual amount received by me for making these additions. I can't tell whether I took a larger or smaller amount, because I did not refer to the figures which they received at all. (1469-1470.)

In the valuation of the One Hundred and Thirty-second street holder which was completed during the pendency of this suit, built by Bartlett, Hayward & Company under Mayer's supervision, yet he testified that he "did not give the figures from the estimate or contract price. My present figures came to more because at that time we had under consideration the construction of four holders of the same capacity, under which condition we gave a low price." (1598.)

In regard to buildings he stated: "In estimating the value of the buildings I took the buildings of the Kings County Gas & Illuminating Company in Brooklyn, which were constructed in 1899. The class and character of buildings are very similar to the buildings of these various works. That was a coal gas pant of a million

and a half capacity; that is, originally a million and a half, laid out for three million; all the matters and principal details were arranged for three million, so it could be extended to that capacity. I took each building by itself and ascertained the cost of such building per cubic foot of contents, figured from the basement line to the eaves of the roof; these were my unit figures applied in the other buildings of the various gas works now under consideration. I did not measure the walls and compute the number of bricks that would be in those walls and the price of brick laid. I ascertained what was the cubic contents of the building; what is the cubic air space within that building. I divided the price by the number of cubic feet and that was the price per cubic foot * * * Q. If you were going to make figures to put in a bid to the Consolidated Gas Company for building a building, is that the way you would figure the original cost, the way you have testified here? A. No." (1398-1401.)

It will be noted that this does not purport to be an appraisal based upon what it would cost to produce the plant new to-day. The reason for failing to give such an appraisal is very evident. It would be necessary then to give the value of a modern, up-to-date plant that would produce the amount of gas that the plants of the Consolidated Gas Company do. Therefore, instead of doing this, Mayer guessed at what it would cost to reproduce this identical plant and then guessed what depreciation should be allowed.

We submit that the complainant was required to prove either what it would cost a competitor, having the right to sell gas to the city of New York, to build a plant that was capable of producing the same quantity and quality of gas that the complainant did, or that the actual cost of complainant's plant should have been proven and a proper allowance made for depreciation on account of age, obsolescence and wear and tear, but they failed to do either, and therefore we submit that, as far as the plant is concerned, the complainant failed to prove, under the

rules laid down in the decisions upon this subject, the value of its property actually and necessarily used in the business of making and distributing gas.

Cost of a Modern Plant (Further Details).

We present an estimate from the evidence at hand:

The plants of the complainant have a daily capacity to produce 9,500,000 cubic feet of coal gas and 41,500,000 cubic feet of water gas.

Mr. Mayer testified that a 3,500,000 coal gas plant could be produced without holders for $340 per 1,000 of daily capacity, a 4,500,000 for $330, a 5,000,000 for $327, a 6,000,000 for $315. When pressed for this ratio in a 9,500,000 he said he could not give it, that the ratio changed as you advanced, but the rate of change alters when you get to small plants, and he does not believe any plant can be built for less than $300 per thousand (1454-1458).

These unit figures of Mayer's on the coal gas plant are derived from his figures on the value of the Fourteenth and Forty-second street plants.

Mr. Mayer testified (1457):

> "*Q.* It would cost less per unit of capacity to build one coal gas plant that would produce 9,500,000 cubic feet, wouldn't it, than it would to add together these two Fourteenth and Forty-second streets?
>
> "*A.* Oh, yes; you mean in one plant, yes, sir."

Unit from Astoria Plant.

We have better evidence derived from the actual cost of the construction of the most modern and up-to-date plant in America. There are two retort houses, one with inclined and the other with horizontal retorts; these are designed to produce 10,000,000 feet each day, a total of

20,000,000 for the two houses; the purifying houses for each retort house are complete. "I might say by way of explanation," said Mr. Bradley, "which will save a little time afterward, that each house is connected as an independent gas works; that is, there are two retort houses, and two purifying houses—duplicates of everything right through—so when I speak of two houses I mean one unit. It is all one plant. It is a duplicate manufacturing plant. I call it one unit, but it is divided into two parts, and each part is a complete gas works" (542-543).

Taking the various buildings and contents on cross-examination, he having on direct given the cost of the plant, Mr. Bradley was asked the cost of one of those gas plants with a 10,000,000 capacity, with the following result (1705-1713 to total on 1713 includes holders):

Retort house	$302,304 03
Apparatus	933,291 09
Purifier house	159,430 48
Apparatus	200,142 80
Condenser house	25,960 03
Apparatus	83,405 72
*Tar extractor house	41,965 24
*Apparatus	124,617 79
†Exhauster house and contents	40,000 00
†Meter house and contents	32,179 30
†Boiler house and contents	34,866 01
†Tar tanks	7,000 00
†Ammonia tanks	20,000 00
†General connections	43,500 00
Electric power house	77,000 00
Tools, implements, horses, office furniture, *boats, *scows, **pennant* fresh water fixtures	65,353 32
Coal and coke handling	250,000 00
Total	$2,441,015 81

*Not in Manhattan plants.

†Estimated for 10,000,000 capacity.

or a unit of $244.10, which would make a 9,500,000 plant cost $2,318,950, for a modern, up-to-date coal gas plant, as against Mr. Mayer's valuation of $3,121,241 for the Fourteenth and Forty-second street plants (1319-1320, 1370-1374).

Mr. Matthewson claimed on the argument that items were omitted from the above statement, and the Master found: "From the record as cited it appears that the witness expressly stated the figures regarding the Astoria cost, which he then gave at counsel's request, were not complete or accurate. They were supplemented later by a statement of items omitted, amounting in the aggregate to $4,327,930.67." To this refusal to find, as requested, these defendants duly excepted (83d exception).

The Court will find, referring to Mr. Bradley's testimony, that at the end he stated that he thought this was unfair, that we had taken certain things and divided them by two. His attention was then called to the fact that the only things that he had divided by two were the meter house, tar and ammonia tanks, boiler house and contents and general connections (1712). These amounted, out of a total of $2,191,015, to $137,545.31. Then he complained that there were other things omitted and he was asked:

> "*Q.* * * * Now you stated you thought this was unfair to you as an engineer to arrive at an estimate in this way; in what way would it be dealing unfairly with you?
>
> "*A.* You omitted all the grading, filling and the necessary work or real estate to produce this plant; you omitted the bridge that was necessary to prepare the docks for the receipt and discharge of coal; you omitted the wharves; you omitted the coke-handling plant; it is not anything like up to where it should be.
>
> "*Q.* Well, I think, your criticism on the whole, as to the coal storage and coke plant is probably well

> founded, and we will take that; what would be the value of a coal storage and coke plant necessary to handle those articles in a 10,000,000 daily capacity plant? * * *
>
> "*A.* The coke and coal handling business would be $500,000 or $250,000 for the half" (1712-1713).

The Court will observe that everything except the coal and coke handling plant would be referable to real estate and to the particular Astoria real estate, whereas what was sought was the value of the plant, exclusive of real estate and holders. If we turn to Complainant's Exhibit 235 (Exhibits, p. 5289), we find the coal and coke handling plant to be as follows:

Coal-handling machinery.....	$232,506 22
which, divided by two, equals.....	116,253 11
Coal-handling machinery, horizontal retort house	87,526 30
Coke-handling apparatus, horizontal retort house	71,260 72
	$275,040 13

—which makes Mr. Bradley's estimate of $250,000 appear too low by $25,040.13.

Also probably should be added:

Pumphouse building to tar tanks.....	5,513 75
Pumphouse building to ammonia tanks...	6,149 07
One-half of electric power station contents (Mr. Bradley estimated one-half building)	74,904 37
	$111,608 32

And we submit that these are all the items that should be added to find the cost of a manufacturing plant to be erected on Manhattan Island on the present property of

the company. The other matters in Complainant's Exhibit 235, Astoria tunnel, $2,650,000, railroads, railroad equipment, temporary structures, etc., all have reference to the Astoria plant, or to the other one-half of the unit, which would not be reproduced; therefore, we will take these corrected items and add to the former total:

	$2,441,015 81
Corrections as above—	
Cost of 10,000,000 daily capacity modern coal gas plant	$2,552,624 13
Cost of 9,500,000 daily capacity of present coal gas plants at the same unit value ($255.26 per thousand)	$2,424,970 00
Mr. Mayor testified (pp. 1517-1518), and the Master has found (VII. request, p. 175, Master's report) that the water gas plants could be reproduced, capacity 41,500,000, for	5,104,500 00
Total, coal and water gas plants present 51,000,000 daily capacity	$7,529,470 00

To this amount, holders, building, apparatus and connections at holder stations must be added as follows:

The present capacity of the complainant's holders are 43,600,000. Mr. Bradley testified that the 5,000,000 holders had been built for the past ten years. Steel tanks have been built within the past ten or fifteen years; it may be twenty years; due to the advance in the art of steel construction (pp. 657-659). He stated the reasons why a large holder is more economical to make than a small holder are: Take a small holder 100 feet in diameter and another of 200 feet in diameter, the holding capacity of the latter increases four times; if you take one holder of 100 feet in diameter the circumference of the

tank of that holder will be 314 feet; four times 314 feet will be 1,256 feet; one holder of 200 feet diameter will be 628 feet; four small holders built in that way, that double the quantity of tank surface will hold about 2,000,000 feet; the large holder will hold 5,000,000 feet and occupy the same ground space; with a large holder there are five lifts and with a small holder it is impossible to put more than two or three on account of the disproportion between the diameter and the height (pp. 640-641). Therefore, in reproducing the holders to-day we would build eight 5,000,000 holders and one 3,600,000 instead of forty-five holders ranging in capacity from 205,000 to 5,000,000 feet. Complainant has three comparatively new 5,000,000 holders—two at One Hundred and Eleventh street, and one, just finished, at One Hundred and Thirty-second street. We find the two One Hundred and Eleventh street holders valued by Mr. Mayer, with interest and engineering charges added, at $776,971 (pp. 1399-1340), and the one at One Hundred and Thirty-second street valued at $434,346 (pp. 1340-1341). The latter Mr. Mayer says that he had valued at more than it cost the Consolidated; therefore, to allow for all possible contingencies it would be fair to complainant to take the average valuation of these three by Mr. Mayer, or $403,773, as the reproduction cost of these eight holders, which would amount to $3,229,184. As to the 3,600,000 holder; at Fourteenth street there is a 3,250,000 holder in a steel tank which Mr. Mayer valued at $314,248, or $96.69 per thousand of capacity; this unit cost would be larger than for the 3,600,000; therefore, if we should take that unit, complainants would not complain, 3,600 by 96.69—$348,084. We would have to provide, however, for the five distributing stations, taking Mr. Mayer's valuation of One Hundred and Thirty-second street for buildings, apparatus and pipe connections, $106,365 (pp. 1340-1341), it being the most modern and, likewise, the most expensive, we would

add $531,780, and we have produced plants, modern and up-to-date in every particular, at the following cost:

Cost of Modern Plant.

Plant	$7,529,470 00
Holders	3,577,268 00
Building, apparatus and connections at holder stations	531,780 00
A total of	$11,738,518 00
As against the Court's	15,500,000 00
A saving of	$3,761,482 00

If we assume that they should be allowed for the land and they would use the land they use to-day, we would have the land, plant, mains and services valued as follows:

Real estate (less deductions)	$10,422,106 30
Plants	11,738,518 00
Mains and services (book value)	7,852,151 03
	$30,012,775 33

as compared with the Master's valuation of $43,591,000 and the Court's valuation of $42,415,435 for these same items; and that of capital investment of $29,978,060, and original cost $29,266,757.46, and the sworn value as given by Mr. Carter of $27,408,700.

We repeat that the allowance by the Legislature of $30,000,000 was a fair and reasonable allowance for the value of complainant's plant. And when we consider that in the above total valuation of $30,012,775.33 is included the real estate on which stands the five manufacturing stations, it is evident that real estate of a greater value than the difference between that figure and

the $27,408,700 would be eliminated. The testimony of Mr. Carter before the legislative committee that that was the value of the plant reproduced new was the truth.

To escape the charge that the estimate on the Astoria plant is not fair, and considering that, for the purposes of this argument, the Master's contention that the Astoria investment is to be allowed, is well founded; and furthermore, to give the complainant an up-to-date plant, capable of producing all the gas which they manufacture and sell with a margin of surplus to take care of the normal growth in their business, we will consider the value of a plant 70,000,000 cubic feet daily capacity placed on the Astoria land—20,000,000 coal gas and 50,000,000 water gas—and to be liberal in every way we will allow the full value of the land and not consider that it was designed for a plant twelve times as large as the present unit, and that the tunnel and a great deal of the grading, filling in, docks, water supply and other matters are referable to the larger plant, and we have the following result:

Astoria land, tunnel and plant, including 15,000,000 holder and tank for a second one of same capacity, everything as per complainant's Exhibit 235...	$13,250,739 60
Water gas plant, 50,000,000 capacity..	6,150,000 00
Holders and holder stations as above...	4,109,048 00
Total plant value and Astoria real estate	$23,509,787 60

The complainant would then scrap the works on Manhattan Island. If they reserve at each works sufficient land for the erection of two 5,000,000 holders, of the same size as that occupied by the One Hundred and Eleventh street distributing plant, 475 feet by 200 feet,

at the valuations given by the Master for the real estate, they could on a sale realize as follows:

Fourteenth street blocks 988, 989, 991	$1,156,000 00
Forty-second Street, 325 feet of block 1089	507,812 00
Twenty-first street, blocks 951, 953, 978, 979, 987	1,912,000 00
Forty-fourth street, block 1092	645,000 00
Ninety-ninth street, 175 feet of block 1670 and block 1692	448,958 00
	$4,669,770 00
Scrap (estimated by Bradley at 600,000 or 700,000 for one-half plant)	1,200,000 00
Total realized scrapping Manhattan plants	$5,869,770 00

This amount should be deducted from the Manhattan real estate of the company and we have the following:

Real estate, Manhattan	$4,533,336 30
Real estate and plant, Astoria, holders and holder stations, Manhattan	23,509,787 60
Mains and services (book value)	7,852,151 03
Meters and miscellaneous	4,100,000 00
Working capital	1,616,000 00
	$41,611,274 93

As to Complainant's Ownership of Franchises.

The New York Gas Light Company was incorporated by chapter 85 of the Laws of 1823, and was endowed with perpetual succession and with

> "full power and authority to manufacture, make and sell gas, to be made of coal, oil, tar, peat, pitch or turpentine, or other materials, and to be used for

the purpose of lighting the said city, or the streets thereof, and any buildings, manufactories or houses therein contained and situate, and to enter into, make and execute any contracts, agreements or covenants in relation to the objects of this incorporation, and of enforcing the same, and be capable of purchasing, taking and holding any estate or property, real or personal, as shall be necessary to give effect to the purposes of this incorporation, or for the accommodation of their business and concerns: *Provided,* the value of such real estate shall not exceed $100,000. *And provided also,* that no public street, lane or highway in the City of New York shall be dug into or in anywise injured or defaced, without the permission of the corporation of said city first had and obtained."

The permission—constituting its Municipal Franchise—was obtained from the Common Council on May 12, 1823, but by its very terms it expired on May 12, 1853, and there is no evidence or claim that it was exer extended, renewed or any other permission obtained.

We have then a gas company possessing only a franchise to be a corporation, but without any existing Municipal Franchise whatever, and its occupancy of the streets being merely on sufferance and liable to be divested or terminated at any moment at the pleasure of the City.

It is preposterous to assert that such an uncertain and unsubstantial municipal privilege—a mere occupancy based upon acquiesence—possesses any definite or ascertainable value as an existing or valid franchise.

The Manhattan Gas Light Company was incorporated for no definite period by chapter 59 of the Laws of 1830, to manufacture gas and to lay pipes for that purpose, but without authority to disturb the streets without permission from the City first had and obtained. By an agreement with the City of May 8, 1833, the company was au-

thorized to lay underground pipes in the streets, which agreement by its terms expired on May 13, 1853; on May 3, 1848, a similar agreement was entered into, which by its terms expired on *May* 5, 1868, and which has never been renewed or extended. The legal and practical status of this company is therefore the same as that of the New York Gas Light Company as stated above.

The Metropolitan Gas Light Company was incorporated by chapter 545 of the Laws of 1855, wherein it was permitted to manufacture gas and to lay pipes in any of the streets *when authorized to do so by the Common Council,* and in 1858 such authority was given by the Common Council for thirty years, which period expired in December, 1888.

The Municipal Gas Light Company was incorporated on May 29, 1874, under the provisions of an act entitled "An Act to authorize the formation of Gas Light Companies," passed February 16, 1848, and its term of corporate existence was fifty years.

No municipal franchise was ever directly conferred upon it *by name.*

On December 21, 1876, the Common Council passed a resolution giving general permission "to *all* incorporated gas companies to lay gas mains and pipes in the streets, avenues and public places" in said City upon such *conditions* as might be prescribed by the Mayor, Comptroller and Commissioner of Public Works, and on March 22, 1877, the said Commission of officials prescribed the conditions of said general permission. The permission aforesaid given by the Common Council was limited to a period of thirty years, which term expired on *March* 22, 1907.

There can be no question but that such franchise was invalid in its inception because of the attempted delegation of the authority of the Common Council to a com-

mission of City officials to determine the conditions thereof.

It was a power which could not be delegated. The conditions which accompany a grant must be regarded as a part of the grant itself.

This has been the settled law of the State for many years.

Anderson *vs.* Equitable Gas Light Co., 12 Daly, 462.

Matter of Pet. of Emigrant Ind. Savings Bank, 75 N. Y., 388.

The general statute of 1848 which provided for the organization of gas light companies was framed upon the theory for which we contend. It declared that the corporations created thereunder should have *power* to manufacture and sell gas and "to lay conductors for conducting gas through the streets, lanes, alleys and squares in a city, village or town, *with the consent of the municipal authorities thereof*, and under such regulations as they may prescribe."

Upon the repeal of the 1848 Act in 1890, and the substitution of the Transportation Corporations Act (chap. 566 of the Laws of 1890), substantially the same provisions were enacted whereby a gas company may lay conductors in the streets, squares and highways in any city, village or town "with the consent of the municipal authorities thereof and under such reasonable regulations as *they* may prescribe."

The "municipal authorities" mean the Common Council and not subordinate officials.

The People *ex rel.* W. S. El. Co., *vs.* C. T. & E. S. Co., 187 N. Y., 58.

The franchise was incomplete and could not vest in the grantee in the absence of the "conditions" or "regulations" on which it was granted. The power to fix the

conditions could not be delegated because they must necessarily accompany the grant before it could become vested.

Realizing, or at least fearing, the invalidity of any franchise which had been granted by or through the said Municipal Commission, the "franchise-grabbers," (so-called) induced the Legislature to pass chapter 530 of the Laws of 1885, whereby all grants made by said Commission were declared ratified and confirmed; but as this act was simply an *amendment,* and the title of which amended act being only as follows, viz.: "An Act to amend chapter 410 of the Laws of 1882, entitled 'An Act to consolidate into one act and to declare the special and local laws affecting public interests in The City of New York,'" and as the amendatory act was local in its character and embraced more than one subject which was not expressed in its title, it was invalid and void because in violation of section 16 of article III. of the Constitution.

Cahill vs. Hogan, 180 N. Y., 304.

The Master at page of his report, says that,

> "Although this statute is claimed to be unconstitutional, its validity *must* be assumed *for the purposes* of the present proceeding."

We answer that no such "*assumption*" is permissible or can it be justified. When the complainant asserts that it owns existing franchises of great value and relies upon a statute recognizing, "ratifying and confirming" their legality, it is a perfect answer to the complainant's claim to show in this proceeding that the statute relied upon is unconstitutional. No better answer could be made; and besides the Master cites no authorities to sustain his unwarranted assumption.

But irrespective of the question whether the municipal franchise of this Municipal Gas Light Company was void in its inception, it expired by its terms on March 22, 1907, and therefore in December, 1905, it had only about

one year and four months to run, which fact unquestionably deprived it of any substantial value in December, 1905.

The Knickerbocker Gas Light Company was incorporated on June 24, 1876, and its term of existence was limited to fifty years, which corporate existence will not expire until June 24, 1926.

No municipal franchise was ever *directly* conferred upon it. The Master in his report (pages) states the further *claims* of this company as follows, viz.:

> "The company *claims* to have become vested through *mesne* assignments with all the rights and privileges conferred by chapter 944 of the Laws of 1871, passed June 12, 1871, whereby there was granted to certain individuals therein named, and their assigns, authority to make and sell gas to be used for the purpose of lighting all that portion of The City of New York lying north of the centre line of Seventy-eighth street, including all of the Central Park, and to lay pipes for the purpose of conducting the gas in any streets, avenues, lanes, alleys, squares and parks of the said City and of the said Central Park; * * *
>
> "It was further provided therein that nothing therein contained should be construed to authorize the laying of gas pipes within the Central Park or any of the parks or other territory within the control of the Department of Public Works, without the consent of the Department of Public Works first had and obtained."

It does not appear that any consents were ever given by the Department of Public Works or by the Common Council of The City of New York for the laying of gas pipes in any of the parks of said City or in any of the streets of said City; and therefore the said Knicker-

bocker Gas Light Company acquired no municipal franchise whatever *via* the 1871 legislative act.

The Master in his report (p.) states the further *claims* of the said Knickerbocker Company as follows:

> "The Knickerbocker Gas Light Company also *claims* to have succeeded to the rights of the Anthracite Gas Lighting and Heating Company of New York, a corporation organized under the *General Manufacturing Act* of 1848. Its certificate of incorporation was filed on May 28, 1863, and provided that the corporate existence should continue for the period of fifty years. By resolution of the Boards of Councilmen and Aldermen, adopted respectively on June 18 and 22, 1863, said corporation was granted the right to lay pipes and mains for conducting gas through the streets, etc., in The City of New York for a period of fifty years."

The Harlem Gas Light Company was incorporated on February 1, 1855, for a period of fifty years. Its State franchise to be a corporation therefore expired on February 1, 1905, before the passage of the Act of 1905, reducing the price of gas. The Boards of Aldermen and Councilmen, respectively, on March 26, 1855, and April 23, 1855, granted to said company the privilege to lay pipes in all the streets north of Seventy-ninth street in The City of New York (unlimited as to period of use) and reserved the right to purchase at any time from the said company all its property by paying to the said company therefor the cost of the same and ten per cent. additional.

Its municipal franchise was worthless in 1905, at the time of the passage of the Gas Reduction Act, because that franchise had necessarily expired with the termination of the company's corporate existence on February 1, 1905.

The learned Master in his report (pages) has confused or conglomerated the mere State franchise or

authorization to be a corporation with the municipal franchises, which were granted by the local authorities for the use of the streets.

The reasoning of the learned Master in his report (pages) is clearly unsound wherein he assumes that the mere fact that the complainant has not been prevented or disturbed by the City in the use of its pipes in the streets, and had not prior to the commencement of this action, brought any action or proceeding to oust it from such streets or otherwise directly attacked, cancelled or revoked the privileges theretofore granted, therefore the City is estopped from insisting that the said franchises have expired and lapsed, and that they have no substantial value, being dependent upon the acquiescence or supineness of the City authorities.

Such facts do not constitute any legal estoppel to prevent the City from *now* assuming its rights. The Legislature has the conceded right to reduce existing rates for the sale of gas, provided such reduction is not unreasonable, and the presumption being that the legislative price *is* reasonable, the complainant when it comes into Court and asserts that it owns valuable franchises upon which it must earn large profits, the City has a perfect legal as well as moral right to insist that the franchises in question have expired and therefore they are now of no substantial value and cannot now be taken into consideration in securing a higher price for gas than that permitted by the act of the Legislature—a rate fixed after a thorough, careful and painstaking legislative investigation in which the complainant was fully and patiently heard.

If the fact that the whole or a majority of the complainant's municipal franchises have lapsed or expired would actually reduce or destroy their value, then it follows that the City had a right to avail itself of that fact in reduction of the valuation claimed by the complainant

herein, and neither the circumstance that the City did not promptly oust the complainant from the use of such franchises upon the expiration thereof, or did not otherwise diligently proceed to assert the rights of the municipality, does not constitute an estoppel either in law or in equity. The Master asserts that the mere omission of the municipal authorities to institute legal proceedings to oust the complainant from the streets, which he terms an "acquiescence" in such use, present considerations which "would appear to be sufficient *for the purposes of the case*, and render necessary a discussion of the elaborate arguments presented by counsel" (Master's Report, page).

We deny the correctness of the Master's conclusion. The ascertainment of the value of franchises "for the purposes of the present case" requires no different application of legal rules than in any other case where values are involved. If a lease for a term of years has existed, but the lessee is still in possession, holding over after the expiration of his term with the mere acquiesence of the lessor, the lease itself cannot be deemed to have any real value capable of estimation, as the lessee may be ousted at any time, and there is no fixed or definite unexpired term of tenure to which a substantial value can attach.

The situation, then, thus far presented is briefly this:

(1) The municipal franchise of the *New York Gas Light Company* expired in 1853.

(2) The municipal franchise of the *Manhattan Gas Light Company* expired in 1868.

(3) The municipal franchise of the *Metropolitan Gas Light Company* expired in 1888.

(4) The municipal franchise of the *Municipal Gas Light Company* expired on March 22, 1907, having only a term of about sixteen months of permission left after the Gas Reduction Act of 1905 went into operation.

(5) The *charter* of the *Harlem Gas Light Company* expired in February, 1905, and therefore its municipal franchise (which was limited to the streets and squares of the City above the centre line of Seventy-ninth street) *necessarily* expired with the expiration of its charter.

(6) The status of the Knickerbocker Company will be stated later.

This, then, is the precise situation summarized—that the municipal franchise of three out of six of the constituent companies had absolutely expired before the enactment of the gas legislation of 1905, and that before such legislation the *charter* of the fourth one had already expired, which necessarily deprived the municipal franchise of any value; and that in 1905 the municipal franchise of a fifth company had only about sixteen months of corporate life remaining, so that it may again be safely asserted that the said five franchises in 1905 were practically valueless.

As to the Knickerbocker Charter.

The sixth and remaining company (the Knickerbocker Gas Light Company) has only a franchise to be a corporation which will not expire until 1926, but as no municipal franchise has ever been directly bestowed upon it, it is sought by the complainant, in the first place, to establish such a franchise through various assignments from the individuals named in chapter 944 of the Laws of 1871.

The Master, while admitting that numerous objections have been made to the title of the Knickerbocker Company to the rights, if any, conferred by that act, then declares that they "need not be stated in detail," and that "they are for the most part highly technical and many of them could obviously be cured" (Master's Report, page).

We deny either their technical character or that they can be cured at all.

The Master further observes that:

> "Irrespective of this, however, the complainant has such broad powers derived *from other sources* as to render the technical validity of the Knickerbocker charter a matter of slight moment for the practical purposes of its operations (Id.).

We deny that the Knickerbocker Company has any such "broad powers derived from other sources" as conferred upon it by any substantial municipal franchise.

The "broad powers" to which the Master refers must indeed be looked for from "other sources," as they certainly are not discernible in the Knickerbocker charter itself.

There is no satisfactory evidence that the Knickerbocker Company ever acquired the privileges which were conferred by the Act of 1871 (chap. 944) upon the grantees therein named "and their assigns." Those grantees were forty individuals in number, consisting of Isaac P. Morton and thirty-nine others, mostly connected directly or indirectly with the City government, while under "ring rule," so-called.

The powers conferred upon them were to manufacture and sell gas for the purpose of lighting streets and public places in the City (including Central Park) north of Seventy-ninth street, and to lay pipes therefor in such streets and parks; the control and management of the said business was to be by an Executive Committee consisting of not less than seven nor more than thirteen of their number; but it appears that instead of conducting said business themselves as contemplated by the act aforesaid, seven of their number, under date of February 25, 1874, styling themselves the "Executive Commit-

tee" as well as "the owners as joint tenants of the franchise granted by said act, purported to assign to the Union Gas Company" the right to do, exercise and perform *as the agents and attorneys of the Executive Committee* and their successors all the rights, privileges and franchises granted or created by the said act of 1871 in the same manner as the grantors themselves might do (Exhibit 188, pages); and this contract or assignment was subsequently assigned by the Receiver of the Union Gas Light Company to one Clark Bell (Exhibit 197, page), and by Clark Bell to the Knickerbocker Gas Light Company (Exhibit 116, page).

It further appears that afterwards and on December 11, 1876, seven other gentlemen styling themselves the "Executive Committee," and also "the owners as joint tenants" of said franchise, made a similar assignment, as in Exhibit 199, to the Knickerbocker Company the right to exercise the franchise as agent or attorney (Exhibit 198, page).

Without going into the details of other assignments, it is sufficient that the evidence shows that the Knickerbocker Company did not possess at any time either the State or municipal franchise as direct assignee or owner, but if anything merely possessed the right to use the franchise as agent or attorney of the Executive Committee of the owners.

We insist that the individual owners of the franchise of 1871 had no right to delegate to any other body than an Executive Committee of their own number the actual "control and management of the business," and especially no right to delegate the same to any corporation, and that the Executive Committee had no right to delegate the control and management vested in them by the owners.

Besides it is respectfully submitted that the numerous and various assignments relied upon by the complainant to show its title to the franchises claimed to have

been conferred under the Act of 1871 were not satisfactorily proved by the evidence produced before the Master.

Without going much into detail, it is sufficient to state that the record shows that there was no competent or sufficient evidence of the following material and essential matters:

First—That the persons who assumed to act as an Executive Committee were ever legally chosen as such.

Second—That the persons named in the first section of the Act of 1871 ever met within ninety days after the passage of the act, or at any other time, and by ballot selected by a majority vote an Executive Committee consisting of not less than seven nor more than thirteen of their number, or that due notice of the time and place of such meeting was ever published in two daily newspapers of that city, as was required by section 3 of the Act of 1871 (page).

Third—That there were ever any minutes of the meetings, if any, of the persons named in the first section of the Act of 1871, or any legal evidence that any such meetings were ever held.

Fourth—Of the authenticity, execution or delivery of the instrument (Exhibit No. 103, page) purporting to be a grant to the Manhattan Gas Company (No. 109, page), and of the instruments purporting to be resignations of various persons describing themselves as an Executive Committee (No. 201, page) purporting to be a general release from Walter Osborn and others to the Knickerbocker Gas Light Company.

Fifth—Of many other material matters essential to show a complete chain of title to the alleged franchises claimed by the complainant to have been acquired by the Knickerbocker Gas Light Company by assignments and transfers through various persons and corporations under the Act of 1871, and through, from and under the charter

of the Anthracite Gas Lighting and Heating Company. Facts which were improperly or insufficiently proved before the Master must be regarded before the Court as not having been proved at all.

Neither did the Knickerbocker Company derive any municipal franchises from the Anthracite Gas Light and Heating Company, for the simple reason that the latter company had none to confer. The latter company was incorporated in 1863 for fifty years, and a municipal franchise was granted to it in 1863 for fifty years, and in 1905 it had only eight years more of life. It was not incorporated under the Gas Light Companies Act of 1848, but under the Manufacturing Companies Act of that year (Exhibit 107, page), and was invested with no power to perform any public function nor any power to lay pipes in the public streets, even with the consent of the municipal authorities.

Hence the action of the municipal authorities in attempting to confer upon a strictly manufacturing company a grant which it could not lawfully use rendered such franchise void in its inception.

The attempted transfer or assignment of the Anthracite Company's alleged municipal franchise in 1865 to the Citizens Mutual Gas Company (Exhibit 109, page) and by that company to the Union Gas Light Company in 1871 (Exhibit 11, page) and by the receiver of the latter company to Clark Bell in 1876 (Exhibit 115, page), and by Clark Bell in the same year to the Knickerbocker Gas Light Company (Exhibit 116, page), was each legally ineffectual to confer upon said assignees a valid title to said franchise because the original recipient of such franchise had no power to receive or to use or to assign it, not being itself a public service corporation. But even if the said franchise should be deemed valid if subsequently assigned to a public service corporation, such a corporation had not at that

period any power to abrogate its public functions and delegate the performance thereof to an individual, and an individual receiving such a franchise could not assign it to any other person or corporation, not even to a public service corporation. Such a contract was *ultra vires* as well as against public policy. The Supreme Court of the United States has so decided.

Thomas *vs.* Railroad Company, 101 U. S., 71.

It therefore seems clear that as the Knickerbocker Company never directly received from the municipal authorities any franchise whatever, and as the attempts to confer franchises upon it through various assignments from individuals *via* the Anthracite Lighting and Heating Company, a corporation created under the General Manufacturing Act of 1848, have proved futile to confer any valid and existing franchises in the said Knickerbocker Company, it was in 1905 and is to-day without any municipal franchises whatever.

We ask this Court to reverse the judgment of the Circuit Court and dismiss the bill of complaint, with costs.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney General.

OCT 13 1908
JAMES H. McKENNEY
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 396.

WILLIAM R. WILLCOX, *et al.*, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT,
Appellants,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,
Appellee.

No. 397.

THE CITY OF NEW YORK,
Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,
Appellee.

No. 398.

WILLIAM S. JACKSON, AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK,
Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,
Appellee.

BRIEF OF CITY OF NEW YORK, APPELLANT.

FRANCIS K. PENDLETON,
Corporation Counsel,
Solicitor for City of New York,
Appellant,

ALTON B. PARKER,
WILLIAM P. BURR,
Of Counsel.

NEW YORK:
MARTIN B. BROWN COMPANY, PRINTERS AND STATIONERS.
NOS. 49 TO 57 PARK PLACE.

1908.

Supreme Court of the United States.

October Term, 1908.

No. 396.

WILLIAM R. WILLCOX, *et al.*, constituting the Public Service Commission of the State of New York for the First District,

Appellants,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,

Appellee.

No. 397.

THE CITY OF NEW YORK,

Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,

Appellee.

No. 398.

WILLIAM S. JACKSON, as Attorney-General of the State of New York,

Appellant,

against

CONSOLIDATED GAS COMPANY OF NEW YORK,

Appellee.

Brief for The City of New York, Appellant.

Appeals from the Circuit Court for the Southern District of New York. In Equity.

Statement.

These three appeals are brought to this Court on a single transcript by stipulation among the solicitors for the respective parties (see Record 487), and are to be heard together on the several Assignments of Error of the respective appellants.

This is a suit in equity. The bill of complaint (Rec. pp. 1-20), was exhibited by the Appellee in the Circuit Court, May 1, 1906. Its object is a decree declaring that certain enactments of the Legislature of New York are in contravention of Amendment XIV. and of section 10 of Article I. of the Constitution of the United States, and also to have declared null and void a certain order made by the Commission of Gas and Electricity created by chapter 737, Laws of 1905, hereinafter mentioned.

The enactments in question are printed in full as exhibits to the bill of complaint (pp. 21 to 31, Rec.). They are chapter 736, Laws of 1905, entitled "An Act in relation to the price of illuminating gas furnished or sold to the City of New York, and providing a penalty for violation," chapter 737, entitled "An Act to establish a Commission of Gas and Electricity, with power to regulate the price of gas and electric light and certain other electric service, and to provide for the control and supervision of gas, electric light and other electric corporations, and making an appropriation therefor," and chapter 125, Laws of 1906, entitled "An Act in relation to illuminating gas in the City of New York, and regulating the quality and pressure thereof and the price to consumers other than the said City, and providing a penalty for violation."

Chapter 736 was approved June 3, 1905, and became effective by its terms July 1, 1905. Chapter 737 was approved June 3, 1905, and became effective immediately. Chapter 125 was approved April 3, 1906, and

became effective by its terms the first day of May thereafter. The order made by the Commission of Gas and Electricity became effective by its terms the first of May, 1906.

Section 1, chapter 736 (Rec., p. 21) provides as follows:

> "A corporation, association, copartnership or person engaged in the business of furnishing or selling illuminating gas in the City of New York shall not charge said City or receive therefrom for such gas a sum in excess of 75c. per thousand cubic feet."

Section 2 prescribes the quality and illuminating power of the gas to be manufactured, and regulates the pressure in the service mains.

Section 3 prescribes a penalty of $1,000 for each offense in violating any provisions of the Act.

Chapter 737 creates a Commission of Gas and Electricity, to consist of three commissioners, to be appointed by the Governor, and prescribes their terms of office, mode of conducting business and other general powers.

Among these powers is the power (Section 15, p. 26, Rec.):

> "Upon the complaint in writing of the Mayor of the City, the Trustee of the village or the Town Board of the town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in writing of not less than one hundred customers, and after (Section 17) a public hearing shall be had upon such complaint at which the complainants and the person or corporation complained of shall have an opportunity to be heard and may be represented by counsel * * * the commission * * * may fix the maximum price of gas or electricity * * *. The price so fixed shall be

to 75c., the provisions with reference to illuminating power and standard of purity, the pressure of the gas and the penalties therein prescribed, and also the provision of chapter 737, creating the Commission of Gas and Electricity, the order of the Commission, made February 23, 1906 (copy of which is annexed as Exhibit C—p. 29), limiting the maximum price of gas to customers other than the City of New York to 80c. and prescribing the standard of illuminating power, and making provision in regard to the pressure of gas, and also the provision of chapter 125, limiting the price of gas to 80c., and prescribing a standard of illuminating power, and fixing the pressure and providing penalties for any violation of its provisions.

It is claimed in the complaint that the said acts and the said order are unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States, because they deprive the appellee of its property without due process of law and take its property for public and private use without just compensation, and deprive it of the equal protection of the law. It is further claimed that it is an absolute physical impossibility to comply with the provisions in the said statutes and orders in regard to pressure, that there is an unjust discrimination in favor of The City of New York, that the penalty clauses in both statutes are so oppressive as to be unconstitutional, and that the creation of the Commission of Gas and Electricity is a delegation of legislative power.

The answer of the defendant, City of New York (Rec., p. 57) puts in issue every material allegation of the bill of complaint, and by way of separate defense sets up an investigation made by the Commission of Gas and Electricity, avers that full and ample opportunity was afforded to present all the facts, that all the facts were duly considered, and that the actions taken by the Legislature and the said Commission were just and reason-

able; that a full and complete investigation into the affairs of the company (appellee) was made under an act of the Legislature passed in 1885, another in 1886 and another in 1905, and by the said Commission of Gas and Electricity in the years 1905 and 1906, and annexes (Rec., pp. 66-135) to and makes part of its answer a copy of the report of the joint committee of the Senate and Assembly of New York, dated April 29, 1905; alleges that it is the largest consumer of gas supplied by the appellee and that the price of gas to it of 75 cents is more than sufficient to repay the appellee a fair and reasonable profit; that the appellee owns and controls every corporation with one unimportant exception (to wit, Bronx Gas and Electricity Company), engaged in manufacturing and supplying gas or electricity for illuminating purposes or distributing the same in the Boroughs of Manhattan and The Bronx in The City of New York, and regulates and controls as a monopoly the price of gas and electricity in the said boroughs.

The answer denies that the appellee is or ever has been a corporation duly incorporated, and denies that the several constituent companies were corporations duly organized and existing, with powers, property and franchises, as claimed by the appellee, at, prior to, or since the time of the consolidation, and denies that the appellee became the owner of the franchises or consents of its predecessor companies; denies that it has become the owner or entitled to maintain and operate the mains, pipes, etc., of its said predecessor companies; denies that it laid additional main, pipes and conductors in The City of New York with the consent of the municipal authorities of said City; avers that the appellee has not made out any title to the relief prayed.

On the coming in of the report of the Master and after the hearing of exceptions to the report, the final decree (pp. 430 to 434) was entered, confirming the report of the Master except in certain particulars as to which the

exceptions to the report are sustained and its findings modified, and adjudging that chapter 736 of the Laws of 1905 and chapter 125 of the Laws of 1906 and the order of the Commission of Gas and Electricity, made the 23d day of February, 1906, are each of them illegal and void because in contravention of the Fourteenth Amendment to the Constitution of the United States, in that they take complainant's property without due process of law and without just compensation and deny the complainant the equal protection of the law.

History of the Consolidated Gas Company.

See

Report of Senate Committee 1905 (p. 66, Record).
Report of Senate Committee 1885 (p. 5325, Record).
Yaldens Report (p. 5591, pp. 5726-5728, Record).
Pooling agreement (p. 5541, Record).
Masters' Report (Record, p. 152).

The Consolidated Gas Company has a monopoly of the gas and electric lighting business in the Boroughs of Manhattan and The Bronx, in the City of New York.

It sells more gas per capita and per mile of main than any other gas company in the world. The sales per capita in London, the next largest consumer, are between 8,000 and 9,000 cubic feet per capita annually. The Consolidated Gas Company sold dur-

ing the year 1905 about 9,250 cubic feet per capita (Record, p. 1591).

It supplies over 400,000 customers.

These appeals present for final and definite settlement by the supreme arbiter under our system important questions in the *science of economics* and in the realm of constitutional limitations upon the exercise of the police power possessed by the several sovereignties that compose the greater Commonwealth. And these questions vitally concern the people of the whole country, both the humblest person of the most limited means, and the greatest aggregations of wealth and power in exceptional enterprises especially authorized by these sovereignties, for the public convenience; aptly described as *public utility* or *public service* corporations. We hope, as we believe, that the counsel engaged are animated by the spirit of faithful adjutants to this supreme tribunal, not less than by the spirit of upright advocates for the client that called them into the particular service. We are sure that we are actuated by no sentiment of hostility to that combination of money, intelligence, experience, ability, high character and zeal for the public good and regard for the law of the land which is not altogether wanting in every corporate body organized to promote the public convenience. Many—many more than is commonly supposed—of the executives of these bodies recognize duty to the public as well as to the corporation whose affairs they are called to manage, and execute their several functions under a high sense of mutual obligation. Our learned associates as well as the distinguished lawyers and accomplished gentlemen who represent the appellee are, we have no doubt at all, animated by the like spirit, while the record bears ample testimony to the learning, patience, industry and fidelity of His Honor, from whose conclusions we appeal, and of the Master to whose findings we except.

And so, we felicitate ourselves and we congratulate the whole people that we are now come under such auspicious circumstances to perhaps the last important stage in the evolution of the law regulating the reciprocal rights and obligations, on the one hand of the people for whose service and convenience public utility corporations are created, and, on the other, of the rights and duties, with their limitations and conditions, granted to and imposed upon these useful bodies.

It is not claimed that chapter 736, fixing the rate for the City at 75 cents, would operate to deprive the appellee of its property without due process of law, but that such would be the effect of the two statutes operating together; so we treat them as though they were contemporaneous enactments.

Upon a review of the adjudications which have had to do with rate regulations we find none which undertakes to point out every element that may be considered as comprising the investment on which the corporation is entitled to demand a fair return, nor any precise rule by which the value of each is to be ascertained. None of the decisions of this Court from *Munn* vs. *Illinois* (94 U. S., in 1876), down to and including the latest deliverances has undertaken to formulate such a rule. We are all familiar with what was said in *Smyth* vs. *Ames*, A. D. 1897), 169 U. S., on p. 547:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it. * * * than the services rendered by it are reasonably worth. And (p. 546) in order to ascertain that value, the original cost of construction, the amount expended in permanent improvement, the amount and market value of its

> bonds and stock as compared with original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say there may not be other matters to be regarded in estimating the value of the property."

That was said in reference to a railroad corporation maintaining a highway, but later cases relating to rates of water companies and of gas companies have not formulated any rule more definite, each case having been disposed of according to its own peculiar facts and circumstances.

One rule clearly established by this Court is that no return can be exacted from the public on palpably unwise expenditures; but IF THE COURT REFUSES TO ALLOW A RETURN ON MONEY ACTUALLY BUT IMPROPERLY SPENT, HOW CAN IT BY ANY DISTORTION OF REASON DECREE (AS WAS DONE IN THE CASE AT BAR) SUCH A RETURN ON MONEY NEVER EXPENDED?

The cases seem to justify the following propositions:

> *To take the actual investment less depreciation as the basis for present value, can work no injustice to the Company in any event, and may only work injustice to the consumer where such cost exceeds the duplication value basis;*

Where the actual investment is *less*, to take the duplication value, *must* work an injustice on the consumer by requiring him to pay a return on money never expended.

> *The rule* is that *the investment shall be taken.*

The exception or limitation is that the investment shall be disregarded only where *equity to the consumer* requires it.

It would serve no useful purpose to review all the cases here. In none of them is the valuation of real estate, as a separate and distinctive element, nor of franchise, involved.

But in the cases now before the Court two of the principal factors included by the Court below in the computation of value as a basis of return, are real estate, mains and services, and, as described in the final decree (p. 432), "special franchises."

The constitutionality of the legislation involved in these appeals depends, so far as the reasonableness of rates and pressure in the gas mains of the appellee are concerned, upon extraneous facts which had to be ascertained. Hence the reference to a Special Master "to take all the testimony herein, make all needed computations, and fully find the facts." So far as affects the question of rates, all the findings of the Court below embodied in its final decree are in accord with the findings of the Master, excepting the item of *good will* and that of *franchises,* but not all the findings of the Master as to what should be allowed to the appellee as part of its capital employed in the public service are approved by the Court. Some items are disallowed as not being part of such capital, and the item of *franchise* is valued at $12,000,000 in lieu of $20,000,000 assigned by the Master to good will *and* franchise, and the item of $3,616,000 working capital allowed by the Master is reduced from $3,616,000 to $1,616,000; and thus the capital employed, according to the report of the Master, $83,357,000 (Record, p. 247), is by the decree reduced to $59,831,435 (Rec., 432, tangible assets, $47,831,435; and special franchise, $12,000,000).

The Master and the Court concur also in the finding that a return of 6 per cent. on the capital employed is a fair return; and the Court finds (p. 408) that, if only the tangible "property is to be considered, this return is sufficient to satisfy the law," that is—to protect the statutes from the charge of unconstitutionality in so far as they regulate rates.

But adding (p. 418, Rec.) $12,000,000 for the intangible asset described as "special franchises" to the $47,831,435, the Court finds, as the capital on which the appellee is entitled to a return, $59,000,000 (in round figures), upon which the probable return is $3,024,592 (Rec., p. 432), or "very considerably less than 6 per cent.," (*it is $565,295 less than 6 per cent.* and is *a little more than 5 per cent.*) and that "this return is neither fair nor reasonable" (Rec., p. 418). Upon this finding of fact—*and solely upon this finding*—the sentence of condemnation of the statutes in question is based, in so far as they fix rates.

The appellee acquiesces in these findings of the Court—the valuation of the tangibles and the intangible and the rate of return. Only the appellants complain thereof. Hence, the appellee cannot now be heard to question either of them.

> "Appellee cannot go beyond supporting the decree and opposing every assignment of error (*Landram* vs. *Jordan,* 203 U. S., October Term, 1905, on p. 62).

It follows, therefore, that if the finding as to any of the items entering into the sum of $47,831,435, or the item of $12,000,000, or the rate of return is, according to the evidence, palpably erroneous, and that the reduction of either or all to such sum as is plainly required by the evidence, or the disallowance thereof, would enable the appellee to earn a fair return, or the return of 6 per cent. found by the Court to be fair, the decree must be reversed. And the decree must be reversed if it is not *made clear by the record* what this item of value and this rate, or either, should be, *the burden of proof being on the appellee.*

Passing, for the present, the valuation of tangibles, and conceding, only for the sake of the argument on this point, that 6 per cent. is a reasonable rate of return, we submit:

Brief of the Argument.

Under Specification I. (p. 17) and the Assignments of Error there mentioned, it is contended (a) that the Court below erred in assigning to the franchises acquired by the appellee under the consolidation agreement a money value as part of the *investment* on which it is entitled to a return. It was *solely* on the finding by the Court of a value of $12,000,000 for these franchises that the Court decreed the enactments to be unconstitutional in respect of the rates fixed. We contend in the argument that whatever monetary value might, for any purpose, be assigned to these franchises, it disappears when the rate of charge for service is so reduced as to yield no more than a fair and reasonable return on the investment in the means employed in rendering the service; (b) that the Court having found $47,831,435 (Record, p. 432) as the value of the tangible assets employed by the appellee, and six per cent. to be a reasonable return, and that the return the appellee would probably realize at the reduced rate would be $3,024,592.45, which is *more* than six per cent. on the valuation so found—the Court erred in adding to that valuation $12,000,000 for *franchises,* thus increasing the *investment* to $59,831,435 (p. 432 Record), on which the probable return would be *less* than six per cent.—though the return would even then be reasonable as is urged under Specification III.

Under Specification II. (pp. 33 to 40) and the Assignments therein mentioned, we maintain that the Court below erred in assigning to the tangible assets any value *in excess of their original cost to the constituent corporations of the appellee and the cost of any additions thereto since* 1884, *the time of consolidation.* We point out in the argument that the entire cost of the real estate employed in its business by the appellee was only $4,118,267.38 as against $11,985,435 allowed by the decree

(Record, p. 432), being a difference of $7,867,167.62, which, being deducted from the total valuation of $47,831,435 (Rec., p. 432), would reduce that total to $39,964,268.38, on which the return of $3,024,592.45 (Rec., p. 432) would be more than *seven* per cent. We point out further that, if the valuation for franchises be excluded, whether we take original cost to constituent corporations, or appraised valuation by the constituent corporations in 1884 for the purposes of consolidation and additions thereto since then, or *even present values* as found by the Master and approved by the Court, the result is the same; the net return of $3,024,592.45 exceeds six per centum; when the item *franchises,* valued by the corporations in 1884 at $7,781,000, and not separately valued by the Master, but increased by the Court, *through a process of reasoning,* to $12,000,000 is added that even then the return is over five per centum. And we show, further, that $5,555,761.63 has been unwarrantably added for *reproductive cost of mains and services* and that deducting this sum and the excessive allowance for real estate from the total found by the Court, the return to the appellee on its investment would be more than eight per cent.

Under Specification III. (p. 60), we endeavor to show that the return of six per cent. adopted by the Court, is more than a fair return to the appellee, that is more than is usually obtained or expected from equally safe investments.

Under Specification IV. (p. 66), it is pointed out that the finding of the Court as to the impossibility of the appellee fulfilling the requirement as to pressure in its mains is predicated of the erroneous valuations of the property of the appellee, and that these being corrected the appellee would be able to make the requisite changes and still have a fair return; and that the requirement is separable from the other provisions.

Under Specification V. (p. 67), we show that the legislation complained of is not unjustly discriminatory, that the discrimination is just and reasonable, the City standing in the relation of a wholesale consumer or buyer; that the cost of supplying the City is greatly less than the cost of supplying other consumers; and that the difference of five cents per thousand feet in favor of the City when spread over the entire sales of the appellee results in a difference of only fifteen one-hundredths of a cent per thousand feet in favor of the City.

Under Specifications VI. (p. 69), it is submitted that the appellee has an adequate defence at law against proceedings to enforce performance of any of the provisions of the statute, if they are not enforcible, and, by injunction, against the separable provisions for penalties.

Under Assignments of Error First, Second, Third and Fourth (Record, pp. 444-446), and *Thirteenth* (Record, p. 450), and *Sixty-third* (Record, p. 465), we submit:

SPECIFICATION I.

For the reasons stated in Assignments of Error Sixty-second to Sixty-fifth, both inclusive, the Court below erred in assigning to the franchises of the appellee a valuation of $12,000,000 (Record, p. 432), and in assigning thereto any valuation, and adding such valuation to its investment in the means of manufacturing and supplying gas to consumers, and in overruling in this respect this appellant's second exception (Record, p. 340) to the Master's report.

The first, second, third and fourth assignments (Record, p. 445) assign as error the decree of the Court in Paragraph 6, page 433, adjudging and decreeing that the several acts of the Legislature of New York complained of are unconstitutional upon the ground that the rates fixed by these several statutes do not allow to the appellee a just and proper return upon its properties employed in the production and distribution of gas and therefore deprive the appellee of its property without due process of law and without just compensation and deny to it the equal protection of the law.

The Thirteenth Assignment of Error (Record, p. 450) is: "In sustaining the report of the Master in Chancery, refusing to find in accordance with the written request of this appellant, as follows:

> "'That the cost to the constituent companies of its several classes of property, without appreciation or depreciation, was as shown by the books of the constituent companies, $20,942,632.85, and that the

> item of $7,781,000 did not represent anything of value, but was an arbitrary figure used for the purpose of equalizing stock values, as shown by the market prices between the constituent companies';

and in overruling in this respect this appellant's second exception to the Master's report."

The Sixty-third Assignment of Error (Record, p. 465) is: "In adjudging and decreeing in Paragraph II. of said decree that the value of the franchises of the complainant employed by it in the manufacture and distribution of gas was the sum of $12,000,000."

The Master, in his report (Record, p. 247), found a valuation of $20,000,000 for franchises *and* good will, "being unable (he says) to *differentiate in figures* the complainant's franchises and good will." The Court (Record, pp. 411, 412) disallowed good will, and, instead of $20,000,000 for franchises *and* good will, allowed $12,000,000 for franchises alone (Opinion, Record, p. 418, and Decree, p. 432).

There can in this case be no franchise value included in the means employed by the appellee in its business except such as is predicated of a return in excess of a fair and reasonable return upon its investment. When the rate of charges yields no more than a fair and reasonable return, there is no franchise to be valued. But the Court finds (Record, p. 408) that the return upon the property or investment of the appellee, excluding the franchise, would be, at the rates fixed by the statute, a fair and reasonable return—that is, the Court finds as total of tangible assets $47,831,435 (Record, 432), and that the net income at the reduced rate would be $3,024,592.45, and more than (p. 433) 6 per cent., which is $2,869,886. The very claim of a return upon franchise value involves an admission that the appellee has been receiving more than a fair return upon

its investment for the public. The claim in effect is that there has been an *accretion to the investment* of the appellee by reason of the omission of the State during so long a time to exercise in behalf of the public the right to regulate the return; that because the appellee was able, through the inaction of the Legislature, for so long a time to exact an excessive return, that *permission* has matured into *a right*, of which it cannot now be deprived unless its value be ascertained and that value converted into capital on which it shall have a permanent return; that when the State deprives it of that to which, against the will of the State, it has not and never had the right; which it had only so long as the State—it may be—was in ignorance of it, or for some reason chose to permit it, the appellee is then deprived of its property without due process of law; a mere toleration, at best, by the State, subject at any time to be abated by the State, has matured into a right, and it can only be taken away by condemnation of the property being used under its protection, and it must then be paid for; or if not taken away, but only the excessive charge of which it is predicated is reduced or regulated, then what was the value to it of that excess must be ascertained, and then added as a permanent *investment*. Through such a process of reasoning, if sanctioned by this Court, a principle would be evolved whereby an intangible asset representing no investment whatever, may be, against the policy of the law, created by courts and imposed on consumers and a return exacted from them on millions of dollars not one of which was ever invested by any one in anything; a burden built up, perhaps—possibly—by the cleverness of officials in concealing the truth, or possibly on the legislative policy to foster for a time a particular enterprise of public moment, until it should become sufficiently profitable to be subjected to regulation.

In the opinion of the Court below (Rec., p. 412) "this claim as an original proposition is unsound." "Return,"

says the Court, "can be expected only from investment, and he that invests must part with something in the act of investing. Can it be said that complainant or any other corporation similarly situated has invested its franchises in its business? It did not invest in its franchise because it did not pay for it. It did not invest its franchise because it did not part with it in the same way that it parted with money or money's worth in acquiring or creating mains or plants. The investment of property was made not in the franchise but under the franchise and on the faith thereof."

This quotation is made, not for the mere sake of arraying the presiding Judge against the decree of the Court, but because of its inherent manifest soundness.

His Honor therefore believes that "*on principle*" a franchise should be held to have no money value as against consumers, and should not be treated as an *investment* or as any part of the *capital employed for the public convenience*. He reaches the conclusion, however (Rec., 413), that it must be so treated because of "the trend of decisions and methods of reasoning pursued in well-considered cases dealing with kindred topics, and even by the dicta of courts of approved authority where such dicta indicate, as they often do, a train of thought necessarily suggested by the exact matter in hand."

But we submit that none of the cases referred to in the opinion (Rec., 414, 415)—and we will not trouble the Court with a discussion of them—involves the thought that the franchise of a public utility corporation can ever be considered in the regulating of rates as an item of *investment*. One of the controlling considerations of the Court below in assigning a value to the franchises of the appellee seems to be based on a supposed identity between regulation and condemnation proceedings (Rec., 414, 415). But regulation is not condemnation nor "*pro tanto*" condemnation. It is not condemna-

tion at all. It is only, simply, and cannot otherwise be described than *regulation* of rates for service rendered. The franchise is not taken away. The franchise is not impaired. The corporation is left in the exercise of its full rights under the franchise. *Nothing* is taken away *to which the company had a right.* It never had a *right* to earn any more than a reasonable return on its investment. If the rate allowed will yield that return, it is deprived of no right whatever.

The vice of His Honor's view of the trend of decisions is in the impression received by him that franchise is always regarded as synonymous with property; property and franchise reciprocally enhance each other through this association. We are so accustomed to the collocation of property and franchise in speaking of corporations that we unconsciously come to treat the words as synonymous. As all property is held on the implied condition that it may at any time be taken for public use by condemnation proceedings, so every franchise of a public utility corporation is held and exercised on the implied condition that its rate of earning may at any time in the discretion of the Legislature be regulated down to a fair and reasonable return upon the actual investment without the slightest reference to its earning power or capacity, or to what it may be actually receiving, though its earning capacity and *the exercise thereof* may be the very provoking cause of the regulation.

The Court in its opinion says that the question is *res nova,* and so it is, in the sense that it has never been directly adjudicated by any of the courts, so far as we know. "How novel it is," says His Honor, "exactly as presented, is shown by the silence of most of the textbooks concerning regulatory rates, and the summary and insufficient treatment accorded the question in the valuable treatise of Messrs. Beale & Wyman."

So far from being "summary and insufficient," they, we beg to say, in one paragraph treat the subject *fully and exhaustively*. We quote section 362:

> "It must be clear that in estimating the capital upon which a public service company is entitled to a fair return, the value of a franchise enjoyed by the company cannot be considered. The value of the franchise is itself based on the capacity of the company to earn profits and it becomes greater when the earnings of the company are increased. If therefore a high rate of income could be justified on account of the great value of the franchise, this fact would in turn enhance the value of the franchise itself and so justify a still higher charge, and there would be no limit to the legal charge of the company until the limit of charge which was possible as a matter of business had been reached. In one case there is a dictum that the value of the franchise may be considered in arriving at the proper basis for just compensation, but it is submitted that the suggestion is unsound."

It seems to us, as we have indicated, that this statement by these learned authors, who had evidently carefully reviewed all the decisions then extant on the subject, furnishes an unanswerable reason why there can be no such thing as a capitalization of the franchise by the appellee so as to enable it to exact a return thereon from its customers. The method by which the Court below ascertained a valuation of $12,000,000 for this item furnishes in itself striking evidence that no value as *invested capital* can be assigned to the franchise. Surely, if it has a value, there must be some standard of valuation; there must be some means of ascertaining the value. Surely it is not to be left to be guessed at by the Court which is called upon to determine it, or to be determined *in some arbitrary and unascertainable way by the corporation itself* and

then *built upon by the Court* on account of the increase of business. The latter method is the one adopted by the Court in this case. The Court says of the foundation of this item of $12,000,000, *the allowance of which has alone resulted in the condemnation of the statutes:*

> "That the complainant (p. 417) did at the beginning of its career measure the value of its franchises. It does not appear *how it was done nor how the figures selected were chosen,* but it is proven as a matter of fact that when complainant was organized in 1884 under a statute which permitted it to acquire the property and franchises of the older gas companies consolidated to form it, it then issued stock of the par value of $7,781,000, representing the franchises it then acquired and nothing else; and this stock is still outstanding, and has since 1884 been in the hands of purchasers who, I am compelled to think, have a right to rely upon legal protection for legally issued stock" (by which is only meant that chapter 367 of 1884 provides that the capital of a consolidated company shall not be larger than the fair aggregate value of the property, franchises and rights of the several companies to be consolidated. But that is a *general law* and applies to franchises that *have* a value as part of capital). "There is no direct evidence that complainant's franchises in 1884 were worth $7,781,000 or are worth that much to-day. I do not see how such evidence can exist, but because complainant made an arbitrary valuation so long ago, issued stock on the faith thereof, did that lawfully and has maintained dividends upon that stock ever since, I find it *presumptio juris* that complainant's franchises in 1884 were worth $7,781,000; and to that extent *it* is certainly entitled to protection against *confiscatory* regulation."

We beg to analyze this remarkable deliverance, which, as we have said, is the foundation upon which is built an *investment* by the appellee of $12,000,000 for the public convenience, on which therefore the public must pay interest.

In the first place, these large figures—$7,781,000—are adopted by the Court as a basis of franchise value, without knowing how or by what means they were ascertained, only and simply because they *were* ascertained *by this appellee* or by its constituent corporations, and *stock issued therefor.* "No evidence," he says, "exists that they were *worth that much then or are worth that much to-day,*" but somebody holds certificates issued on account of that valuation, and therefore the consumer must pay an annual return of 6 per cent. interest on it; and this, be it observed, in order to "prevent confiscatory regulation." Regulation confiscatory of what? Of something for which the appellee never paid anything nor parted with anything, for something which represents no value ever *invested* by it in anything for the public convenience, but simply and only stock which the appellee saw fit to issue for reasons satisfactory to itself, and which is now held by "innocent" persons. Yet there can be no innocent holder of any such stock any more than there can be—of course, we speak legal language—an innocent holder of a forged promissory note which has passed through many successive hands, each believing it to be genuine. The original issue was purely fictitious, every share of it and every share outstanding to-day that represents a certificate of that issue is equally tainted, however innocent of the taint the holder may be.

We take occasion to observe here that *there are no rights of stockholders, as such,* involved in this litigation or any aspect of it. If stockholders have suffered injury in any way at the hands of the corporation they

must seek through proper means for their redress. No wrong done to them by this appellee can justify an additional wrong on its part to its consumers. In no conceivable aspect can this $7,781,000, which this appellee added to its capital upon its organization, be made the basis for a return from its consumers, and yet the Court below not only charges the consumers in behalf of "innocent" shareholders with a return upon this $7,781,000, but adds to it the further sum of $4,219,000, making $12,000,000 in all, by this singular process:

> "If," (?) says he (Rec., p. 418), "plaintiff's franchises were worth $7,781,000 in 1884, and its tangible property at the same time was appraised, as appears in the evidence, at $30,000,000 in round figures, then since complainant's business (in sales volume) has in twenty-three years almost quadrupled and its tangible assets grown to $47,000,000, it appears to me that a fair method of fixing the value of the franchises in 1905 is to assume the same growth in value for a franchise as is demonstrated by the evidence in the case of tangible property. If therefore the franchise valuation of 1884 was proportioned to personalty and realty of $30,000,000, a franchise valuation similarly proportioned to $47,000,000 in 1905 would be over $12,000,000."

(As we have heretofore indicated, this is a mutual or reciprocal, progressive method of valuing franchise—if it could be valued at all—which would preclude any limit of return below that which as a matter of business is possible.)

He therefore finds that the value of complainant's franchises at the date of inquiry was not *less* than $12,000,000, making the total valuation $59,000,000, upon which the probable return is $3,030,000, or "very considerably less than 6 per cent." (It is a little over 5 per cent.) "This return," says his Honor (Rec., 418),

"is neither fair nor reasonable," and therefore this legislation under consideration is unconstitutional.

We cannot refrain from remarking upon the extraordinary proposition that a statute of a sovereign State is to be condemned as violative of the Constitution of the United States by means of a manufactured item of investment, manufactured in a way unknown to the Court which adopted it, by persons acting solely in their own interest, without the cost to them of a single dollar, and then increased nearly two-fold by a process of reasoning that assigns to it no possible use or value in the business of manfacturing for and supplying to the public an article of necessity. Some light, however, is shed upon the *origin* of this *item*, now *grown* to this dimension, by testimony to be found in the record. The president of the company, a witness for appellee, explains it before the State Board of Tax Commissioners as "representing the *good will* of the consolidated companies, the right *to exist as a corporation, contracts with the City, etc., the right to make and sell gas,* and the *right to occupy the streets*" (Rec., 3107).

In the report of the Senate Committee, March 1, 1886, the minority report explains this item as follows (Rec., 5340):

> "Having determined upon the aggregate amount of share capital (that is, $39,078,000, p. 5325), the next and most difficult matter was to distribute it.
>
> "* * * Finding that the predetermined amount of share capital could not be reached by a liberal appraisal of some of the property and by nothing deserving the name of appraisal as to other properties, a further sum of $7,781,000 was added for franchises, that being the difference between the proposed sum and that which had been reached without it."

In short, according to Senator Gilbert, one of the three members of the committee, $7,781,000 was the difference between what was determined upon, *at the consolidation,* for the *capital stock* of the company, and the valuation which the committee appointed for the purpose had assigned to the assets of the constituent companies. The report of the majority of the committee (p. 5384) furnishes practically the same explanation.

> "The value of this property finally agreed upon by the six constituent companies comprising the consolidation was $29,994,000, but as the value of the stock of the same six companies had been agreed to be $39,078,000, after setting apart $1,303,000 for working capital, it left $7,781,000, which they called the value of the franchises and rights of the several constituent companies."

The presiding Judge in the Court below says (p. 416):

> "The Master reports that the record contains little direct evidence as to the value of the franchises, and he might have added that if by direct evidence is meant testimony of the same kind regarding their value as has been offered regarding every item of tangible property, there is none at all."

And so it is, that notwithstanding the inability of the Senate Committee, either the minority or the majority, or of the Special Master, or his Honor, upon considering the report of the Special Master, and the exceptions thereto, to assign any certain value whatever to the special franchise, and notwithstanding the inability of the Court with all the evidence before it to ascertain why $7,781,000 was chosen to represent this franchise value, it was adopted by the Court merely as a basis upon which, through the extraordinary process of reasoning which we have quoted, there has been built a capital of $12,000,000 upon which the consumers of the gas of the appellee are to be taxed, and by virtue of which, enactments of

the Legislature are to be denounced as unconstitutional and the enforcement of their provisions inhibited; and which, according to the logic of His Honor, must continue to increase with increasing value of tangibles and increasing sales—a perennial plant of constantly increasing growth, without seed or root.

With reference to the argument based on the taxation of franchises, it seems to be quite enough to say that this tax only exists where, and to the extent that, a public service corporation is earning more than a fair and reasonable return upon the values employed by it for the public convenience, and that whenever, either by the voluntary action of the company, or by legislative regulation, this excess disappears, there is nothing to be taxed and nothing is taxed in such case.

Recurring in conclusion to the argument derived from a comparison of or from the supposed analogy between condemnation proceedings and regulation rate proceedings, we quote, because of the conciseness and intrinsic force of the statement, "Beale & Wyman on Rate Regulations," section 364:

> "Whether when the plant of a public service company is taken by a city, by eminent domain or by contract compensation is to be made for the franchises of the company, is not entirely clear on the authorities. The question, of course, should be determined according to whether, in view of the purchase or taking, any value remains in the franchise. Although the company may be compelled to submit to statutory rates, which make no account of the existence of the franchise, the franchise may nevertheless be of some value. Even when the rates are so limited, the company is still permitted to receive a return on its capital which is greater than on a government bond; the ownership of the plant may therefore have a certain value which the fran-

chise gives. And if the franchise actually has a value, compensation for it should be made."

But, we repeat, the fixing of a rate—a fair and reasonable rate—takes nothing to which there is a legal right.

A final analysis of this item of $12,000,000 for special franchises will disclose that it is a charge against the consumers *to the credit of Investment,* merely—*solely*—to secure a *dividend on shares of capital stock* of the par value of $7,781,000 which, by the process discovered and used by the Court below, has appreciated to $12,000,000 or a little more than 54 per cent. To this extent and only to this extent, in this case, has share capital been considered in estimating the investment. But the Court said it *had to be done* in order to *protect "innocent" shareholders;* and these "innocent" shareholders have been specially favored over all other shareholders by more than 54 per cent. There seems to be no reason why the other shares should not be equally favored. They were issued at the same time as part of the same share capital. But if they were so favored the *investment* would be swollen to nearly $86,000,000 as against $47,831,435, *present* value of tangibles as found by the Court. Not only so, but according to the process of the Court, the value of the share capital would continue to increase, *pari passu,* with increasing sales and increasing market value of neighboring lands and, with the added increment of realty, would be aded to the *investment,* and so the only limit to *investment* would be, *not investment,* but market value of real estate, capacity of production and consumers to take it. Such is the monstrous and intolerable result of the theory and reasoning on which *alone* is based the verdict of the Court that, palpably and beyond all doubt, these statutes will deprive the appellee of its property without due process of law.

It seems perfectly clear, therefore, that there is no basis whatever for the value assigned to franchise or

franchises in this case, or for any value at all. But if it is not allowed, then, according to the opinion of the court, and to the finding of the court, which is acquiesced in by the appellee, it must follow that the enforcement and operation of the statutes in question will not inevitably deprive the appellee of a fair return upon its investment, as the same was ascertained in the court below, *and the decree must be reversed.*

Now, what say our adversaries?

(1) The appellee is "securely and *perpetually* in possession of the streets by virtue of the charters of one or more of its constituents;" (2) "the provision of the present charter of the City of New York, under which charters may now be granted for only twenty-five years and imposing onerous conditions for their procurement, enhances the value of appellee's franchises by eliminating the possibility of a competitor procuring a perpetual or unburdened franchise." This was their argument in the Court below.

Now, we ask, in all simplicity, how such conditions *add anything to the investment* by complainant for the public convenience? But it is only on investment that it is entitled to demand a return. Fortuitous circumstances, pre-existing conditions and later legislation which it is absolutely certain was not by the legislative department designed to that end, and a consolidation of substantially all the corporations thus *securely possessed of the streets,* have resulted in a monopoly, "in eliminating," say the learned counsel, "*the possibility of a competitor procuring a perpetual or unburdened franchise*" ("Brief for Complainant before the Special Master," p. 100). Shall the inherent value to the appellee of this impregnable fortification against any invader of its field, the unintended issue in part of legislation by the people *in the interest of the people,* be made the means of *oppressing the people* and enabling the appellee to exact a re-

turn on something which represents no investment whatever by it? Surely not, unless by a return on investment is meant a return not only on money and property employed by the Corporation, but on all the incidental advantages, no matter how inimical to the public convenience or the public service; a money value for which is to be guessed at or arbitrarily fixed. Counsel for the appellee invoked in their support the action of the State Board of Tax Commissioners in 1906, fixing the value of appellee's special franchises for the purpose of taxation under Chapter 712 of the Laws of 1899, and cited the opinion of the Court of Appeals of New York in *People ex rel. Met. Street Ry. Co.* vs. *Tax Commissioners,* 174 N. Y., 417. But that opinion affords not a remote intimation that what is there defined as a special franchise is to be treated as a part of the *investment* of a corporation. It was not so regarded in that case. Beyond disposing of the question of home rule—the principal question—involved in the assessment by the State Board instead of by local assessors, it only decides that a franchise, whether general or special, is taxable the same as other property, overruled the contentions that the act is incapable of execution, that *the special franchises should have been separately assessed,* that the State Tax Commissioners adopted no rule in making the assessments, that the relators did not have a proper hearing, and that due process of law was not observed in the taxation of relator's property. But all this is very far from deciding that special franchises have ascertainable value as part of the *capital on which a return can be demanded from the customers of a public utility corporation.* As the opinion declares, the Legislature simply creates a new chara of property, hitherto unknown, viz., the privilege of using the public highway in constructing, maintaining and operating structures intended for the public use, which property includes such tangible as are " in, upon, under or above any street, highway, public place or public waters * * *

and excludes all power houses, depots and structures without the line of the streets."

It is apparent that only part of this "new character of property" thus "created for purposes of revenue" *represents any investment* by the corporation for which it may levy a tax on the consumer. But it is sought to show by the method of assessment used in that case, through the testimony of the Chairman of the Board of Tax Commissioners (Rec., pp. 1848-1850) that the State Board of Tax Commissioners did, in its assessment *of the appellee*, affix a value "for intangible rights **alone of over $17,000,000.**" The testimony referred to does not sustain that statement. It is, however, immaterial for the reasons already stated, as well as because if appellee had shown, or if it had appeared, that its returns from its investment were not *in excess of what was fair*, there would have been no assessment at all of the franchise, or on account of the franchise; and in any view simply adds to *expenses of the business which are charged to the consumer and not to investment.*

And so, we repeat that this item of $12,000,000 should be rejected because (1) the Master and the Court agree that it is not supported by the evidence; (2) it is built up on a figure ascertained by means unknown to the Court—which the Court was unable to discover—in the language of the Court "arbitrarily selected" by the appellee at its consolidation, and it was accepted by the Court against the consumers in the interest of stockholders whose rights are not involved in this suit; (3) whatever tax the State may impose by any method of valuation the State may adopt for that purpose, is borne by the consumer and adds nothing to the investment of the appellee for the public convenience, nor (4) does the circumstance that in case of a condemnation of the property employed by the appellee under the protection of the franchise, a value would be assigned to the franchise, *add anything to the investment;* because finally

the allowance would establish a principle that would effectually preclude regulation in the case of every corporation that might get the start of or steal a march on the Legislature.

The decree should be reversed because of the error in allowing this item for franchise, or franchises, or special franchises.

SPECIFICATION II.

It is submitted under the Assignments of Error First, Second, Third and Fourth (pp. 445 and 446) that the Court below erred in assigning a valuation of $47,831,435 (Record, p. 432) to the tangible assets of the appellee, and that such valuation was erroneous for the reasons stated in Assignments of Error Fifth to Fifty-fourth, both inclusive, and in sustaining to that extent the Master's report and overruling this appellant's exceptions thereto in said several assignments stated.

We think the following rule may be deduced from the opinions and decisions of this Court: **The Company is entitled to a fair return upon all the money expended by it for the means employed in the service of the public (outside of what is included in operating expenses) and obligations incurred for such means; unless it plainly appears that such expenditure and obligations are in excess of**

what they should have been under all the circumstances, in which case they should be reduced.

Assignments of Error.

Under Specification I., p. 17, was stated Assignments First, Second, Third and Fourth. While we respectfully invite the Court to consider each of the Assignments from Fifth to Fifty-fourth, we trust it will be held to be a sufficient compliance with the rule of the Court if we repeat here only the following as being essential to the argument we offer under this specification.

The Sixth Assignment of Error (Record, p. 450) is: "In assigning to the properties of the complainant employed by it in the production and distribution of gas, in reaching the valuations set forth in paragraph II. of said decree, upon which a return is to be allowed, their present values based on the cost of duplication, less depreciation, instead of their present values based on their actual cost, less depreciation, the former admittedly exceeding the latter, and such excess representing money never actually expended; and in sustaining the report of the Master in Chancery in this respect and to this extent in overruling in like respects and extent the exceptions of this defendant to the report of said Master in Chancery."

The Fourteenth Assignment of Error (Record, p. 450) is: "In sustaining the report of the Master in Chancery finding that the complainant is entitled to a return on the present value of its real estate, as distinguished from its original cost, that although

> 'By far the greater part of the real estate belonged to the constitutent companies before the con-

solidation and was purchased many years ago at prices much below its present value,'

still complainant was entitled to a fair return upon the amount of the increase in value of its real estate holdings or of the unearned increment thereof.

Whereas he should have found that the value on which the complainant was entitled to a return was such cost value to the six constituent companies up to consolidation and to the complainant since then for such land acquired since, less the amount received for sales of any real estate; that the difference between such cost and such present value represents the appreciation thereon, due to local conditions in Manhattan, and not to any increase in investment by the complainant, and amounts to an unliquidated surplus, which can be determined as soon as the property is sold, and both before and after such sale cannot be treated as other than a surplus, and it is not proper to allow a return thereon as against the consumer; and in overruling in this respect and to this extent this defendant's Fourth Exception to said Master's report."

The Fifteenth Assignment of Error (Record, p. 450) is: "In sustaining the report of said Master in Chancery finding that there was no competent proof showing that the original cost of the real estate owned by the complainant was as stated, only the sum of $4,118,267.38, and that so far as the record discloses it is quite evident that the actual cost was in excess of that sum.

Whereas he should have found that said sum did represent substantially the cost of such real estate as carried on the books of the constituent companies; and in overruling in this respect the Fifth Exception of this defendant to said Master's Report."

The Sixteenth Assignment of Error (p. 450) is: "In sustaining the report of said Master in Chancery finding:

> 'In the second place, if the question of original cost is to be considered, it should be the cost to the complainant, the Consolidated Gas Company, and not the cost shown on the books of its constituent companies, some of which had acquired their property fifty years and more before the complainant was organized. The cost to the Consolidated Company was represented by the amount of stock it issued to the constituent companies for their real estate, which, as already stated, was $10,332,000. It may possibly be that this amount was in excess of the fair market value of the property at that time, but the record indicates that the discrepancy, if any, was by no means as large as the defendants have argued.'

whereas he should have found that such value did not represent the true cost of the real estate on which, if at all, the complainant was entitled to a return, but that such true cost was the original cost to the constituent companies of the real estate acquired before consolidation; and as to real estate acquired since consolidation the cost to the complainant. That by the mere act of consolidation in 1884 the complainant was not entitled to increase its real estate investment on which a return is demanded, without any additional outlay of cash; and in overruling this defendant's Sixth Exception to the Report of said Master in Chancery."

The Seventeenth Assignment of Error (p. 450) is: "In sustaining the Report of the Master in Chancery finding:

> 'Whatever enhancement there may have been in its value since the date of purchase was the result of no efforts on the part of consumers of gas, and they are not equitably entitled to a return thereon. Whether it was the result of mere good fortune or was due to the shrewdness and foresight

> of the management of the company is immaterial; in either case, the justice of permitting the general public to share its benefits at the expense of complainant's stockholders is not apparent.'

whereas he should have found that whatever enhancement there may have been in its value since the date of purchase was the result of no effort on the part of the complainant, but, according to complainant was due to "Divine providence and the growth of The City of New York," for the reason that the complainant is not entitled to include such enhancement in the gas investment on which the consumer must provide a return, but may get the benefit of such enhanced value upon the sale of such property when it will be treated as a surplus and it must be so treated prior to liquidation, that to do so imposes no burden upon the complainant, as the taxes are paid by the consumer during the time the property is held, and that to do otherwise would be to impose a greater burden upon the consumer, which would in time enable even a dollar rate to be held confiscatory, since the investment on which the return is figured would be continually enhancing; and in overruling this defendant's Thirteenth Exception to said Master's report."

The Nineteenth Assignment of Error (Record, p. 452) is: "In sustaining the report of said Master in Chancery finding that the complainant is entitled to a return on the present value of the plant, based on the cost of reproduction, and not on the original cost less depreciation, whereas he should have found that where such present value based on the original cost less depreciation, is less than the present value based on the reproduction cost, that the complainant is entitled to a return as against the consumer only on the smaller amount. Otherwise the consumer is burdened with paying a return on money never spent, and deprived of benefits accruing from duplication by an ideal plant,

while no injustice can accrue to complainant in allowing a return on its actual investment in its present condition; and in overruling this defendant's Fifteenth Exception to said report of said Master in Chancery."

The Twentieth Assignment of Error (Record, p. 453) is: "In sustaining the report of said Master in Chancery finding the value of the mains of the complainant on which it is entitled to a return as against the consumer, to be the replacement value based on the cost of reproduction of the same. Whereas, said Master should have found said value of the mains to be the actual cost of investment therein by the complainant, less the depreciation, as the only fair basis between the complainant and the consumer, otherwise the consumer is charged with the burden of providing a return on an amount in excess of the actual investment of the complainant due to increased cost resulting from modern conditions, pavements, etc., without the consumer receiving the benefits which replacements, at the present time, under the present conditions, would give. That in no sense can the mains of the complainant, many of which have been in the ground for fifty years, be said to be at the present time of a greater value than the actual cost merely because modern conditions would not permit duplication of such identical mains at the same cost at the present time; and in overruling this defendant's Eighteenth Exception to the said report of said Master in Chancery."

The Twenty-first Assignment of Error (Record, p. 453) is: "In sustaining the report of said Master in Chancery refusing to find that the appraisal value of both mains and services at the time of consolidation in 1884, was far in excess of their cost; and that the value of mains and services devoted by complainant to the public use was as of December 31, 1905, $6,359,324.46, which represents the original cost of mains and services transferred by the constituent companies to the complainant plus the expenditures of the complainant since 1884 on

account of new construction thereof. Whereas, he should have found that such figures represented the then value of such mains and services on the basis of cost less depreciation, as carried on the books of the constituent companies, and that any figure in excess of such amount which the complainant claimed therefor at that time was in excess of the real value of such mains and services and such excess should not be included in the investment on which a return is to be allowed, for the reason that it does not represent a cash outlay by the complainant, and any capital stock issued for such excess by complainant was unwisely and wastefully issued; and in overruling the Twentieth Exception of this defendant's report of said Master in Chancery.

The Twenty-second Assignment of Error (Record, p. 454) is: "In sustaining the report of said Master in Chancery finding that the complainant is entitled to a return from the consumer on an amount for services based on the cost of reproduction at present prices; whereas he should have found that if the basis of present values is to be taken, no amount at all could be charged by the complainant, as such services are no longer owned by such complainant, inasmuch as so much thereof as are in the public streets are considered as separate from the franchises, and the balance thereof are on private property and belong to the owners of said property, and that it is only when the basis of actual cost, less depreciation, is adopted that any amount for services can be included by the complainant in the amount on which a return is to be provided by the consumer; and in overruling this defendant's Twenty-second Exception to said report of said Master in Chancery."

The Thirtieth Assignment of Error (Record, p. 457) is: "In sustaining the report of said Master in Chancery disallowing and refusing to find:

> 'That the properties of the constituent companies, so as aforesaid transferred to complainant

> as of the value of $29,994,000, cost the constitutent companies new, without allowance for either appreciation or depreciation of its several classes of property, the sum of $20,942,632.85, as shown by the books of account of the several companies.'

Whereas the same should have been allowed, and in overruling this defendant's Seventy-fifth Exception to said report of said Master in Chancery."

The Thirty-first Assignment of Error (Record, p. 457) is: "In sustaining the report of said Master in Chancery disallowing and refusing to find the Sixth Special Finding of Fact requested by the Attorney General of the State of New York and adopted by this defendant, as follows:

> 'That the constituent companies, for the purposes of consolidation aforesaid, by appraisers selected by them, appraised their land in excess of the then market value thereof and appraised their buildings, plants, mains, services and other tangible property at what it would then cost to produce the same new, as a part of a going concern; and that if the Master should find the facts to be otherwise, he find and state the basis and method of such appraisal.'

Whereas, the same should have been allowed; and in overruling this defendant's Seventy-sixth Exception to said report of said Master in Chancery."

To point out the error under Specification II. it is not necessary, in our judgment, to take up any of the items other than that of real estate ($11,155,845, p. 398), —though we shall advert to others—nor is it necessary to perform the labor ourselves of reviewing, nor weary the Court with a review of the evidence to show that this valuation is not sustained by the evidence. It is not necessary, because of what we conceive to be a funda-

mental error in the basis of computation. The valuations of the real estate assigned by the Master in his report are concurred in by the Court below, but his valuation is reduced to the amount mentioned, by the elimination of certain portions of that real estate as not being used or employed by the appellee in its gas business. The valuation is according to the *market* value of other properties similarly situated and *adaptable* to *such use* as the owners thereof may *see fit to apply them.* In short, the valuation is according to what would be the market value of these lands if they were on the market. It would seem to be unnecessary to say more than that these lands are not marketable. They were not in the market. They could not be put upon the market in the condition they were in at the time of this reference to the Master, and are still; so that it is simply impossible to assign to them a market value. They have no conceivable money value to the appellee upon which to base a charge against the consumer except their cost to the appellee as an investment in the business of manufacturing and supplying gas for the public. Indeed, were the appellee to seek a purchaser, and were it to find a willing purchaser, that purchaser would be unwilling to pay any more for the real estate than what he would be allowed to charge for it as capital invested in the business upon which he might have a return from the consumer, and this could not be more than the original cost to the appellee, or its *present value as used* in the business. No matter how it is turned around, it comes to the same thing. No other value can be assigned to this real estate than its cost value so long as it is covered by gas holders and gas apparatus and devoted exclusively to the purpose of manufacturing and supplying gas. If any additional value is to be realized out of it, it cannot be at the expense of the consumers of gas. It cannot be realized even by the appellee as an entity except by disposing of it, converting it into money and distributing the surplus among the stock-

holders, or investing it again in other property for their benefit. It cannot be said that there was any such sale and conversion when these lands became the property of the Consolidated Gas Company by means of the merger of the six companies, for there was an entire absence from that transaction of the antagonizing elements of sale and purchase, *the only purpose being to ascertain a capital for the new company upon which stock might be issued to the several constituents in proportions satisfactory to them severally.* The transaction was by and amongst the several companies. It was not a purchase from or a sale by them or either of them. It was, as it purported to be, a *consolidation,* or *pooling, of the several investments already made, only that and nothing more.* Nobody, human or corporate, added as much as one dollar or the value of a dollar to what had been already invested. True, the several properties were appraised, but they were appraised presumably at what would have been their market value if marketable. This we have endeavored to show, though entirely unobjectionable as among the constituent companies, was absolutely unjust to consumers.

To do otherwise than to take the cost, is to capitalize against the consumer all the appreciation, that is unearned increment of the real estate, which advance bears no relation to the gas business.

All this appreciation is no more than surplus capital, which at some time must be realized upon, and which meanwhile the consumer carries by paying the taxes, and a return on the cost. Suppose, for instance, a parcel were sold at a greatly advanced price, would not the excess over the cost of that parcel be surplus not engaged in the gas business just as logically as if it were invested in electric light or other stocks, or in unnecessary real estate? Why not, then, before it is realized—when it is tied up in real estate in use?

We submit therefore that there is no justification for an assignment of any value to the real estate of the

appellee beyond that of its actual cost. But the testimony found at page 3635 and pages 5871 and 5872 of the record shows that the original cost to the six merged companies was $3,377,971.10 *and the additional cost to the Consolidated Company was* $740,296.28, *making a total of* $4,118,267.38, which represents *every dollar which has ever gone out of the pockets of the stockholders or of any body or from the treasury of any company for any land that is being used by the appellee for the public convenience.* If at the very time of the purchase of this land by the original companies and as each company acquired it, a rate had been fixed based upon the then cost, obviously the rate could not have been questioned on that ground. The proposition, however, by the appellee, is that the rate of return must increase by adding to the cost value of that land used in that business, not by reason of any *additional investment* on the part of the company, but from time to time as the values of land *in the vicinity, adaptable to and used for other purposes,* shall increase; thus making the consumer pay interest not only on the investment, but on the silently accruing uninvested *profit* of the investment (profit on profit), until the corporation shall see fit to convert the real estate and re-invest the surplus or distribute it among the shareholders. It would not be easy, however, to find a safer or more remunerative investment of this accretion. There would be no incentive for seeking less costly land if the corporation could exact interest on the increased and increasing value.

It seems to us that the statement of the proposition exposes—as fully and effectually as any process of argument could do—its sheer injustice to the consumer. If our contention under this point be just, then as a matter of law the valuation assigned to the real estate should be reduced by the difference between $11,155,845 and $4,118,267; that is, $7,037,578, making tangibles $40,793,857 and the income of $3,024,592 over 7 per cent.,

which, however, as we have seen, is unnecessary to rescue the statutes.

The Master says in his report (Record, p. 167):

> "There was no competent proof showing that the original cost of the real estate was only $4,118,267.38."

We think that we have shown there is, but if the Master is correct, then the appellee has *failed to show the cost and must fail on that account.*

As we have already indicated, this sum is shown in the report of Marwick, Mitchel & Co., the defendants' accountants, to be made up as follows (p. 5872):

"Purchase price, including additions and improvements to November 11, 1884.....	$3,377,971 10
"Purchase price, including additions and improvements from November 11, 1884, to December 31, 1905.....	740,296 28
	$4,118,267 38"

The Master disallows this figure on the grounds that the cost to the constituent companies was much in excess of $3,377,971.10, because (pp. 268-269):

> "These figures do not include the real estate of the Knickerbocker Company nor a considerable expenditure made on real estate account by the Harlem Company, and the proof shows that certain real estate of the Manhattan Company was carried on the books at less than cost."

As to the Knickerbocker Company, there is no precise figure in the record. It was taken over in 1884 at $595,000 consisting of real estate $480,000, and bulkhead, piers and water rights $115,000. This figure, however, contained all the appreciation prior to November 11, 1884, and all the appreciation given on the transfer at that time. From the table of accountants (p. 5871) it appears that the total of such appreciation in the case of the other constituent companies averaged over 100%. It is then a safe inference that the Knickerbocker real estate did not cost over $300,000.

To offset this, however, it should be remembered that the figure $4,118,087.38 *covers the cost of all the real estate excluded by the Court.*

As to the expenditures made by the Harlem Company which it is claimed do not appear in the cost figure, the only evidence in the record is at pages 6303-4-9-12, where Mr. Moss, manager and director of the Harlem Company, testifying before the Committee of 1885, testified that he was *informed* that at some time prior to his incumbency in 1879, the plot east of First avenue was filled in by the Gas Company and that the expense thereof so far as it was contained in payrolls, and in the purchase of animals, carts and implements was contained in the expense account, not in the contingency account. But that did not apply to the building of the docks.

For all we know, this may have been regarded, and properly so, as the expense of removing ashes, rubbish, etc., rather than a construction item. But the fact remains that the figure of Marwick, Mitchell & Co., for the cost of the Harlem real estate is $313,211.62 (p. 5871) purporting to be "Original cost, buildings and *improvements*" as against Yalden's $158,899.81 (p. 5709) and Marwick, Mitchell & Co.'s appreciated figure

of $754,000 (p. 5877), includes a valuation for this block (140 on Avenue A, now Pleasant avenue) and a valuation for the bulkheads. It is not to be assumed, then, that the figure of $313,211.62 omitted anything.

As to the claim that certain of the Manhattan Co.'s real estate was carried on the books at less than cost, an examination of Mr. Yalden's report (p. 5624) shows that the only item of "depreciation written off" was $21,706 on an item of "Buildings and Improvements" *not cost.* It will also be noted that Marwick, Mitchell & Co. allow for buildings and improvements on the Manhattan real estate an amount of $513,022.94 over Yalden's figures (p. 5625).

As to the item of $740,296.28 for real estate including additions and improvements from November 11, 1884, to December 31, 1905, the Master says (p. 296):

> "The sum of $740,296.28 is *less* than the *entire* amount paid by complainant for real estate, including improvements and additions thereto, for the reason that it represents a net sum, the receipts from real estate sold having been deducted from real estate expenditures, as previously stated."

This statement is not borne out by the accountant's report (pp. 5871-3); the only deduction made from the book values taken from complainant's exhibits is the item of $142,378 representing *profit* on real estate sold. Surely that is no part of the cost.

It is submitted that under no conditions can the figure $4,118,267.38 be considered unfair to appellee.

What we have said of real estate is equally true of all other tangibles, and especially it is true of the item, *mains;* for which an allowance of $12,636,000 was made

by the Master (Record, p. 247) approved by the Court (Record, p. 432). That was allowed as "the *present* value of the mains based on what would be, according to the testimony of witnesses for complainant (the appellee) (Record, p. 177), the cost of *reproduction.*" The Master, however, says in his report (Record, p. 176): "They are carried on the complainant's books at the sum of $7,852,000." Therefore, $4,784,000, *never expended* or *invested* by the corporation, is charged against the consumer, for no other reason than this: *If the corporation shall have to reproduce the mains,* or *if it had now to purchase and lay them,* it would then cost that additional sum. So also, as to the services: "The capital *invested* in the services, says the Master (Record, p. 178), as shown by the books as of December 31, 1905, is $1,222,228.37," but "the cost of *reproducing* these services at *present prices,* according to complainant's witnesses, would be $1,994,000, and the record discloses no testimony to the contrary" (Record, p. 178). That amount is accordingly allowed by the Master and (Record, p. 432) approved by the Court; which is $771,771.63 in excess of any *cost to* or *investment* by the company on that account. These two allowances in excess of cost aggregate $5,555,771.63. Add that to $7,037,558 excess allowed (*ante,* p. 43) over cost of real estate and we have consumers charged with $12,593,329.63. Add this $12,593,329.63 to the $12,000,000 charged up by the Court for franchises and we have $24,593,329.63 charged to consumers, *not one dollar of which* was ever *expended* or in *any wise invested.* Deducting this total from the "total of tangible assets, $47,831,435" and $12,000,000 for franchises, or $59,831,435 *charged up in the decree* (p. 432) and we have $35,238,106 on which the probable return at the rates fixed by the statutes would be, as found by the Court (Record, p. 432) $3,024,592.45, and that return would be more than eight (8) per cent. on the *entire cost* to the appellee of, and its *whole investment* in the means employed by it

and its constituent corporations for the convenience of the public.

But in this allowance for mains and services, an important factor in the reasoning and conclusions of the Master (last par.) (Record, pp. 177, 178) is the changed conditions, since the laying of these mains and services, in the streets of the City. Says the Master (p. 177, last paragraph):

"The fact that reproduction cost is so greatly in excess of the cost of original construction is due largely to changes in the character of the City's pavements. Formerly, when the gas companies had occasion to open the streets for the purpose of laying new mains or repairing old mains or services, it was their custom to replace the pavement at a cost of from 15 to 25 cents per square yard. Now about 88 per cent. of the streets are covered with new styles of pavement, chiefly asphalt. The gas companies are permitted to open the streets only on condition that the pavements shall be relaid by the contractors for asphalt paving. The expense of this work is paid by the gas companies and amounts to from $2.70 to $7 per yard, the latter price being for pavement on Broadway. Pavements consisting of granite blocks on concrete are replaced by the City's employees and for this work the complainant is charged $8 for the first square yard and $4 for each additional yard. Another source of additional cost is the congested condition of the subsurface of the streets, in view of the multiplication in recent years of various forms of underground construction. In addition to sewer and water mains, there are now conduits for electric light, telephone and telegraph wires, underground trolley ducts, and salt water mains, besides, in certain streets, the elevated railroad columns and structures of the rapid transit railway. The result is that in many streets the entire subsurface is so filled with these structures that the replacement or repairing

of existing mains is attended with great difficulty and consequent expense.

Taking the testimony on this subject as a whole, the preponderance of evidence is very clearly with the complainant, and its estimate of the replacement value of the mains may be taken as reasonable."

We submit it will be time enough to make this charge for replacement, when the replacement shall have been made; especially as the very conditions of which it is predicated may render the replacement unnecessary; or, if ever necessary, only so, at some indefinite and remote period. This is a fair specimen of the reasons for the striking down by a Federal Court of the deliberate enactment of a Sovereign State in respect of an article of necessity to its people; for which they are totally dependent on a monopoly; statutes enacted only after investigations, most painstaking and impartial, extending over a period of nearly twenty-five years.

But the conclusive answer to this charge against consumers, of increased cost of replacement of mains and services is that it would be charged under Expense Account, or some subdivision thereof, to the consumer, and, so, be deducted from gross income in ascertaining the net return. By the decision of the Court, the consumer is charged with $5,551,771.63 *never expended,* and which, *if ever expended,* the company will get back because the consumer will be charged with it *again* as part of the operating expenses.

His Honor says (p. 391 Rec.):

> "As to all of the items from real estate to meters, the complainant demands a fair return upon the reproductive value thereof, which is the same thing properly considered as present value. Upon authority I consider this method of valuation correct."

But we dare say, with deliberation, that no such general rule has ever been declared by this Court, nor can any other than the one we have stated be deducted from the decisions. There is not to be found, we believe, an opinion of this Court which authorizes *a debit to the consumer of one dollar beyond actual expenditure on the consumer's* account for property used in the business, and a reasonable working capital, and a reasonable reserve for repairs and replacements—not one. In every instance where cost was not adopted, and where reproductive value was, the reason has been that only reproductive value would be just *to the consumer.* No doubt had it appeared that the outlay was justified under all the circumstances, it would have been allowed, notwithstanding through later advances in the art of construction, improvement on appliances, decline in cost of materials and of labor, etc., all might be reproduced at less (Field, *J.*, in Railroad Commission cases, 116 U. S., 307, 344). The rule would be otherwise, however, if it should appear that there had been extravagance, waste, unwise construction, etc. (*Chicago Grand Trunk Railway Company* vs. *Wellman*, 143 U. S., 339).

The rule limiting the return to actual cost, where it is not apparent that there was improvident purchase, injudicious location, extravagance, waste, unwise construction, etc., has the merit of definiteness, of being a workable rule, and the only workable rule. By no other can justice be done to the corporation and to the consumer alike. We repeat: To take the cost of the investment *can work no injustice to the company in any event*, and may only work injustice to the consumer where such cost exceeds the present value or duplication value. Where the cost is *less* to take the present value *must* work an injustice to the consumer by requiring the consumer to pay profit on profit to the company. But according to the evidence in the record the cost (by appraisement—not in money—of the constituent compan-

ies) to *appellee* of its plant and all property used for the public as nearly as can be ascertained from its own books did not exceed $30,656,198.75 ($20,942,632.85, Rec., p. 5737, and $9,693,565.90, Appellee's Ex., 79, p. 5032). The net income of the appellee, as found by the Court below, $3,030,000, is more than nine per cent. on this investment.

If appellee is entitled to return on "market" values of the tangible properties of its constituents at time of consolidation, that value *fixed by the companies themselves was only* $30,656,198.75, as we have seen (Rec., pp. 5726-32), on which the return of $3,024,592.45 would be more than nine per centum. In fine, whether we take, as to the property which the Court finds is employed by appellee, original cost to constituent companies or appraised valuation of all tangibles in 1884, *for purposes of consolidation* and addition thereto since then, or *even present* values *as found by the Master* and *approved by the Court,* the result is the same; the net return of $3,024,592.45 exceeds six per cent., and it only becomes less than six per cent. when the item, "franchises," valued by the corporations in 1884 at $7,781,000, and not separately valued by the Master, but increased *by the Court* to $12,000,000, is added, and even then the return is *over five per cent.*

The conclusion of the whole matter of investment is this: Franchise can never find a place in the bookkeeping of a public service corporation, unless on the opening of the books of the corporation there can be written down Investment to Cash, or to Bills Payable and against it an amount actually paid for franchise, or incurred, and the truthful explanation: *This amount paid out for franchise,* or our note, etc., executed for this. There are absolutely but five accounts that concern the consumer or the public, viz.: Investment, Expense, Cash and Bills Receivable, and Bills Payable; and, as against the consumer or the public, no item is to be entered in either

except money actually paid or payable for property employed in the business, or expended or payable, and money taken in or receivable, on account of the business, and the items for money paid out or payable can be allowed only to the extent that they accord with fairly good business sagacity, all the circumstances being considered and duly weighed.

There must be an investment of money in the franchise, or franchise can never become an item of investment on which a return is to be had. If in the course of the company's business it shall have to pay money on acount of the franchise, as, for instance, *on account of a tax imposed,* the amount expended goes into *Expense Account* or some other subdivision and is repaid by the public or consumers, just as salaries and wages are, in ascertaining the net return or percentage on the investment. How for an original entry would this do; Investment to Profit and Loss—it couldn't be credited to any other account—$12,000,000: *Estimated value of franchise taken from us by the State through an act of the Legislature reducing our net earnings to a fair and reasonable rate.* That is precisely what has been done by the Court. How would it impress the Court to find this original entry in the appropriate book of accounts of the appellee: *Investment to Profit and Loss,* $7,781,000; *being estimated value of special franchises of our several constituent companies, being the difference between the amount of capital stock agreed upon for this company and the appraised value of the assets of the several constituents;* or the same explanation found in the stock ledger, and, later, the other entry.

Yet, in some form or other, the substance of these entries must appear, if that item is a proper charge against the public.

As we have endeavored to illustrate in respect of the item, Franchise, so in regard to real estate and all tan-

gibles. As against the consumer there can be no entry except for money paid or obligation incurred in its acquisition. Every other expense in respect of real estate as, for instance, taxes, goes into Expense Account, or into some other subdivision and comes back from the consumers in the striking of the balance of expenses and income. If this be not true, then from time to time as there is a reasonable increase of market value in neighboring real estate adaptable to such purpose as may suit investors generally, such increase may be written into Investment Account to Profit and Loss; "this account being for increase in market value of real estate."

That is, in effect, what has been done by the Court. Yet if the real estate were disused by the company, put on the market and sold, the surplus would not be credited in any of the accounts representing income, so as to increase the net returns and lessen the rate to the public. It would be distributed among the stockholders or reinvested for their exclusive benefit, or put out for the improvement of the service; in which last case only could it be charged to the consumers.

Reproductive Value.

Let us suppose this entry under some one of the accounts—we scarcely know to what one it could be assigned, but let us say, *Investment Account to Profit and Loss*, $, "being estimated excess over cost, of reproducing plant." That is what was done by the Court, though the company has not parted with or incurred an obligation to part with a dollar on that account.

And, so, there has in effect been, by the Court below, written into the Investment Account to the credit of Profit and Loss three items agregating $24,593,329.63. This deducted from the totals, tangible and intangible, found by the Court, $59,831,435, would leave as total investment, $35,238,105.37, on which the net income found by the Court would be more than nine per cent.

If valuation of its property based on cost of reproduction is allowed the company it should be the cost of reproduction of a modern up-to-date plant. Such a plant would reduce the cost of gas and thus inure to the benefit of the consumer.

Thirty years ago the gas companies engaged in the manufacture and sale of gas in the Borough of Manhattan (old City of New York) were keen rivals and competitors for the business. They sought to invade each others territory. They laid their mains and services in the same streets. The new companies, with their new plants, outbid the old companies for the public service. This competition cut down profits and resulted in the Secret Pooling Agreement (Record, p. 5541). Speaking of the condition which existed in 1879, the Senate Report of 1885 (Record, p. 5362) says:

> "Gas was then furnished as low as one dollar per thousand cubic feet; new capital was seeking to supply it, and the old companies sought to defeat the endeavor by destroying the new companies and by impairing the confidence of capitalists in them. But the expensive methods of the old companies and low candle power of the gas produced by them threatened their business and profits in competition with the new rivals. So a truce was agreed upon * * *.
>
> "The truce agreed upon (Record, p. 5363) when the price of gas was restored and the gas pool established was the organization of consolidation. An agreement was made April 5, 1880, between all the companies at that time supplying gas in New York City, fixing the price of gas at $2.25 per thousand cubic feet, providing that there should be 'no canvassing or soliciting of customers.' That no new mains should be laid in streets where mains were already laid, 'it being the intention that no competing mains be laid'; that all sales shall be pooled

and the proceeds distributed in established proportions, and that the agreement should continue for five years 'unless sooner terminated by consolidation' * * *. The immense profits immediately enjoyed by the combination, and the fact that within less than six months from its perfection the quoted value of the shares of the companies participating had more than doubled intensified the possibilities of the future (Record, p. 5363).

* * * * * * *

"Four years and a half of successful operations under the pooling agreement, assisted by friendly legislation, culminated in the consolidation of November, 1885, formally announced to the public with a reduction in the nominal price of gas per thousand cubic feet" (Record, p. 5369).

This consolidation took over the five plants of the constituent companies and their mains and services. Some of the plants even then being old and obsolete, and the mains of some of the companies being in the same street, an unnecessary duplication, triplication and quadruplication of mains, which still exists (see Record, p. 5997-6007, and City's Exhibit 102, p. 5919).

These plants were valued at the time of consolidation in 1884 on the basis of reproduction (Record, p. 2359, and Report of 1885).

All this property has now been valued for the purpose of exacting a return on the basis of the cost of reproduction new.

The consumers of gas have all these years paid for renewals and repairs to these plants an average of over ten (10) cents for every 1,000 cubic feet of gas manufactured and sold since 1884 (Record, State's Exhibit "L," p. 5078, Report of Marwick & Mitchell, p. 5771; Comp. Ex. 85, p. 5039).

Frederick J. Meyer, the expert for the gas company, who appraised the plants for the company, and was

familiar with them to the minutest detail (Record, p. 4649) testified on cross-examination (see Record, p. 1394):

Q. Now, as I understand, you did not make your appraisal by finding out how much this property actually cost the company and then making an allowance for depreciation?

A. No, sir; I never saw any figures of that kind.

Q. Then, if it should appear that this very apparatus cost the company very much less than these estimates which you have given, would you change your estimate or your appraisal at all?

A. No, sir; I would not.

Q. Why not?

A. My estimates are based upon my own personal knowledge of these matters for a good many years, and therefore I cannot be wrong.

Q. And therefore, if the company actually paid less you think the company must have been wrong?

A. Well, I don't know how they established their selling prices, but my values are based upon actual facts as they exist to-day.

Q. Then, as I understand it, you are not attempting to find the capital of the company that was invested in the plant, but what someone would have to pay if they got you to build them a plant somewhat similar to this to-day. Is that it?

A. That is the idea exactly, with the exception that it would be *an exact duplicate of the plant as it exists to-day.*

Q. If, however, you were going to build a coal gas plant to-day of a capacity of 9,500,000 cubic feet per day, would you reproduce this identical plant?

A. I would not (Record, p. 1394).

Q. Would you not say that the more improved a plant is in construction, the better the gas and the lower it cost to manufacture?

A. As to the quality of the gas I should say no. There is no reason why the quality of the gas should not be

as good in a plant that was constructed some time ago as compared with construction to-day. *As to cost of production I should say it would be less when you consider the application of machinery to replace manual labor in connection with improved apparatus* (Record, p. 1514).

He made no allowance for depreciation on account of the fact that a more economical or efficient apparatus was in use (Record, p. 1513).

I think that all the plants that are operated to-day for the manufacture of gas are as perfect as (they) can be made under the conditions under which they were built and developed (Record, p. 1510).

"A great many apparatus cost less to-day than in 1884" (Record, p. 1506).

Q. Now as I understand you, in examining the Fourteenth and Forty-second street plants, for instance, you did not take into consideration whether they were commercially worth replacing, did you?

A. No, sir, I only figured on what I found there.

Q. That is what it would cost to reproduce that apparatus, whether or not it was commercially and economically an apparatus that would be built to-day?

A. I paid no attention to that whatever.

Q. And did you take into consideration whether gas could be reproduced at these particular plants at $1.50 *or 50c. per thousand cubic feet?*

A. I did not consider it at all because it had no bearing whatever on the apparatus as I found them.

Q. As you valued it?

A. As I valued it.

Q. Now, where a plant was of an old type which owing to the advance in the science of gas engineering would not be built to-day did you allow anything for depreciation by reason of that fact?

A. No, sir.

See also Record, p. 1460.

Yet the Fourteenth and Forty-second street plants are capitalized at $4,000,000.

Yet Meyer added to his cost of reproduction of these plants 10 per cent. for engineering and 5 per cent. for interest (see Record, pp. 1323-1326, 1329).

See testimony of Simpson, the company's superintendent of mains (Record, pp. 669, 698, 700, 703). At page 698 he says: "Each of the constituent companies has a different system of mains, * * *. It is unquestionably preferable to have a uniform system."

Yet he added to his valuation of the mains 10 per cent. for engineering supervision, "wear and tear of tools," etc., as the basis of reproducing the different systems of mains of the constituent companies, which no one would think of doing to-day.

This item of 10 per cent. alone amounted to $417,318.85 (Record, p. 3927).

Bradley, the chief engineer of the company, testified (Record, p. 1732):

> "*Q.* What are the circumstances which enable you to figure on reduced cost at Astoria?
>
> "*A. Better equipment; modern equipment,* an endeavor to use all the modern appliances in the shape of labor-saving and recovery of some by-products that have never been recovered by any gas company in this country, and little economies of that character; I do not know that I can enumerate all of them" (see Record, pp. 641, 642, 1731-1733).

And Dr. Humphreys, the company's expert-in-chief, admitted regarding the reproduction cost of real estate (see Record, p. 4740):

> "Increase and appreciation in value of real estate would not pay for anything until that real estate

> was sold and the real estate could not be sold until the property was vacated. It would add to the value of the assets of the company, but would not add to its earning capacity as long as it was occupied by a manufacturing plant."

The company's attitude with regard to the appreciation in the value of the land is stated by counsel (Record, p. 2833) as follows:

> "We accept the gifts the gods provide as they provide them, without protest.
>
> "Mr. BURR—At the expense of the consumer?
>
> "Mr. MATTHEWSON—No, because nothing comes out of the consumer in increasing the value of our land. It is due to Divine Providence and the growth of the City of New York."

Query. If this gift of God is capitalized and a return paid on such capitalization, why is it not at the expense of the consumer?

Even in the case of supplies the consolidation has resulted in increased cost.

Because of the enormous amount of oil required—255,000,000 gallons—the company claims it is required to pay more per gallon to the Standard Oil Company than other companies in Greater New York (see Record, pp. 1564, 3574, 4284, 4289, State Exhibit LLL, p. 3574), and this increases unnecessarily the apparent cost of gas by about five cents per 1,000 cubic feet (Record, Exhibit 94, pp. 2312 and 3574).

It was by the valuation so made by the paid experts and employees of the gas company the law of the State is overthrown and rendered void. See appendix at end of brief, showing 1884 valuation and Complainant's Exhibit 79.

SPECIFICATION III.

Under Assignments of Error First, Second, Third and Fourth, for the reasons set forth in Assignments One Hundred and Third to One Hundred and Fifth, both inclusive, we maintain that the return of six per cent. adopted by the Court is more than a fair return to the appellee.

The one hundred and third assignment of error (Record, p. 473) is:

"In adjusting and decreeing in Paragraph III. of said decree that the lowest rate of return which can be considered legislatively fair, just or reasonable, upon the value of the property employed by complainant in the business of manufacturing and supplying gas, is six per cent., at which conclusion the Court has arrived in part by taking judicial notice of local conditions in The City of New York; and under the two acts and the order, copies of which are annexed to the bill of complainant as Exhibits A, D and C, to wit, chapter 736 of the Laws of 1905 of the State of New York, chapter 125 of the Laws of 1906 of said State, and the order of the Commission of Gas and Electricity of the State of New York, made on the 23d day of February, 1906, and directed to the complainant, the net annual income which the complainant can earn upon the property employed in its gas business as aforesaid is less than six per cent."

Every expenditure, on every account, as it has been borne in the past, so it will be borne in all time to come by the consumer and come back, in short periods, from the consumer to the company. Every conceivable expenditure is charged to us and the other consumers.

without a shadow of risk—as to the City, the wholesale buyer, and practically none as to the retail buyers; and, so, is almost as secure as loans to The City of New York. And the same is true of all its investment. All is money put out, we may correctly say, on absolutely safe security, "as nearly a conservative investment," says the Court below (p. 409), "as any manufacturing enterprise can furnish." At the valuation found by the Court, *including the* $12,000,000 allowed for special franchises, viz., $59,831,435, the net return of $3,024,592.45 is a *little over 5 per cent.*, while, as we have seen, it would be over 6 per cent. if the $12,000,000 be excluded, as we are confident it must be.

The courts have established no definite rule, but this Court has declared in *Covington* vs. *Sanford*, 164 U. S., 578, 597:

> "It cannot be said that a corporation is entitled as of right and without reference to the interest of the public to realize a given per cent. upon its capital stock."

Of course the same is true of its investment.

> "The question in each case is," as said the Court in that case, "whether the Legislature, under the guise of regulating rates, exceeded its constitutional authority, and practically *deprived the owner of property without due process of law.*"

We suppose this Court judicially knows that a return of 4 to 5 per cent. on investments not better secured than is the return to appellee are regarded as eminently satisfactory by the investing public. It certainly would seem to be a fair return for "the most favorably situated gas business in America." The business of this appellee is so characterized in the opinion of the Court below. Says Peckham, *J.*, in *Stanislaus Co.* vs. *San Joaquin C. & I. Co.*, 192 U. S., p. 216:

> "Much of the capital was invested between twenty and thirty years ago, and to be still able to realize 6 per cent. upon the money originally invested is more than most people are able to accomplish in any ordinary investment, and *more than is necessary* (italics ours) in order to give just compensation for property at the time it is used for the public purpose originally intended";

which observation is peculiarly applicable to the appellee.

The net return to the investor in those stocks and bonds in all the large cities of the United States is less than 6 per cent. (Bemis, pp. 2672-3). This means that one who buys a share of stock or a bond of almost any of these large companies must pay so much above par, if the dividends or interest exceed 6 per cent. as to make the real return less than 6 per cent. on the market price which the investor must pay.

The complaint has not attempted to dispute the accuracy of this statement, fortified as it was by an exhaustive survey of the securities of all the large gas companies in North America east of the Mississippi River. Thirty-seven companies were analyzed (pp. 2672-3).

It is no reply to assert, as some witnesses for the complainants have done, that a person could not organize a new gas company on a 6 per cent basis. We are not dealing with new gas companies just starting out in a small city, or endeavoring to compete in a large city. We are dealing with a company that has had a virtual monopoly since 1884, *and which to-day controls even the electric lighting on Manhattan Island.*

When the city of Holyoke was endeavoring to purchase the electric lighting company of that city eight years ago Dr. Humphreys, the Consolidated Gas Company's chief expert witness in this case, a man who acts as

adviser to over fifty gas companies and whose business it is to put money in their pockets (see his testimony, pp. 4759-4761), called as a witness by the company, capitalized the net earnings at 5 per cent. He says now that he did this because he believed that any gas property was worth twenty times its net earnings (Humphreys, p. 4762). Unfortunately for his contention, he did not give this as his reason when testifying at Holyoke, but there gave quite a different reason, viz., *that from the standpoint of the investor in gas securities, 5 per cent. was a good return.* Let us quote his exact words:

> *"Q. Why do you take 5 per cent. as the sum of which you capitalize the new earnings of the company?*
>
> *"A. In my judgment that was a fair return on that kind of an investment.*
>
> *"Q. By that do you mean annual return to the persons who put their money into it?*
>
> *"A. Yes.*
>
> *"Q. And if the investment were represented by stock, you would mean that dividends should be paid at the rate of 5 per cent.?*
>
> *"A. Yes, sir.*
>
> *"Q. And I understand you to say that you valued this plant on the same basis that you valued the plants which you were employed to appraise in New York and New Jersey and other States?*
>
> *"A. The same conditions generally"* (Testimony, p. 2353).

Dr. Humphreys subsequently attempted to lessen the effect of this statement, saying he was testifying regarding "small works in a cheap town" (p. 4734), but later on we find him stating "In these days of low interest bearing securities five per cent. seems hardly attainable" (Record, p. 4761).

Mr. Emerson McMillen has testified for the appellee that when he buys a gas works he expects to realize 9 per cent., or 10 per cent. net earnings, not necessarily dividends, on the price he pays. A few others have given somewhat similar testimony with respect to new gas works just started, but the experience of the Consolidated completely answers this testimony.

It is interesting to note in this connection that Mr. McMillan, who is President of the American Light and Traction Company, which controls the gas companies of Milwaukee, Detroit and Grand Rapids, testified that in all three cases his companies, which had been selling gas for less than 90 cents, had just made reductions to 77 cents in Milwaukee (p. 3267), to 79 cents in Detroit (pp. 3268-9) and to 80 cents in Grand Rapids (p. 3269). He further testified:

> "*Q.* Where you have reduced your prices it has been your experience, has it not, that the amount of gas sold would increase, owing to this reduction?
>
> "*A.* Nearly universally; yes.
>
> "*Q.* If it did not increase you would consider that an exception to the general rule, would you not?
>
> "A. Yes" (p. 3269).

Mr. Carter has testified (p. 543), that the average price of the stock during the five years ending December 31, 1905, was 204⅛, and the dividends during the same time were 8 per cent., with the exception of 1904 and 1905, when they were 8.5 per cent. (Complainants' Exhibit 84, pp. 356-7). This means an average dividend of 8.2 per cent. Now 8.2 per cent. on stock costing the investor 204⅛ is only 4 PER CENT. on the purchase price of the stock.

Again, Mr. Carter testifies (p. 581), that the Consolidated has issued $20,731,200 of stock since 1900, in order to purchase stocks of other gas and electric light companies in Greater New York, and that this stock

was sold at $150 cash. Stock costing $150 and paying 8.2 per cent. dividends nets the investor only 5.47 PER CENT. on the price he pays.

Finally, Mr. Carter states that between 1884 and 1900 the company sold $3,647,940 of stock at an average price of $192.40 (p. 583), while he tells us that the average dividends from 1884 to December, 1905, were 6½ per cent. (p. 532).

An examination of Complainants' Exhibit 84 (pp. 356-7), shows that prior to 1900 the average price was not over 6 per cent. Yet the stock sold at $192.40, thus netting the investor *less than 3¼ per cent.*

The appellee itself in its dealings with the New Amsterdam Company allows a return of but 5 per cent. (See Agency Agreement, p. 5049.)

And for the vast sum of over $50,000,00 invested by appellee in other companies it receives a return of less than 2 per cent. (See State's Exhibit "B," facing p. 5052.)

Finally, the $1,500,000 of 5 per cent. bonds issued in 1888 were sold at a premium of $75,000, *or 5 per cent.* (p. 585).

THE EVIDENCE, INDEED, WOULD SHOW THAT ALL THE CAPITAL IT LEGITIMATELY NEEDS CAN BE SECURED ON A 5 PER CENT. BASIS, EVEN THOUGH THE COMPANY IS NOW TREMENDOUSLY WATERLOGGED BY THE INCREASE OF ITS CAPITAL STOCK, MOSTLY FOR OTHER PURPOSES THAN THE GAS BUSINESS, DURING THE LAST FIVE YEARS FROM $39,077,900 MARCH 15, 1900, TO $80,000,000 OF STOCK AND $19,857,600 OF DEBENTURES OCTOBER 31, 1905 (COMPLAINANTS' EXHIBIT 84, PP. 356-7, AND 80, P. 348).

There is, in the Record *testimony* as to what is a fair rate of interest on investments of the sort under consideration. It has not seemed to us needful to quote it, but if your Honors should look into the testimony on that

subject we beg to refer to that found on pages of the Record, 2347-2354, 2530-2540, 2658, and, especially, the *Tables on* pages 2672 and 2673.

SPECIFICATION IV.

Under Assignment of Error 107th.

The Court decreed in Paragraph IV., page 433, that the pressure required is not physically impossible if the entire system of distribution be reconstructed, but compliance with such requirement is commercially impossible under the rates prescribed by the two acts and order; which, we say, for the reasons stated in Assignment 107, constitutes error.

The counsel for the Public Service Commission will take care of this point. But we beg to observe that in the opinion of the presiding Judge (p. 420) he says:

> "By the expenditure of about $4,000,000 for construction of mains and valves alone, exclusive of any pumping stations or other apparatus, it might be possible to establish and maintain the pressure called for by these Acts. * * * It remains commercially impossible, since the other parts of the statutes cut off the surplus income out of which alone complainant could be expected to perform the work. A change by means of new capital would be impossible, because when made it would not add a dollar to income."

That leaves the question an unsettled one, the item of $12,000,000 for franchise being eliminated and the

real estate valuations to say nothing of other items being reduced to cost; and therefore the complainant has not made it appear by evidence, nor does the evidence in the Record show, that the appellee cannot comply with this requirement in regard to pressure. If with the reduction claimed it should appear that under the rate allowed the income would not be sufficient to permit of the necessary change, relief from that requirement could be had, and impossibility of compliance, if shown, would be a complete defence to any proceeding under that provision. In any view of this provision—it being separable from, and the other provisions of the statute not being necessarily dependent thereon—it may be rejected without invalidating the remaining portions of the statute.

Reagan vs. *Farmers' Loan & Trust Co.*,
154 U. S., 362, 395.

SPECIFICATION V.

While the Court below does not pass upon the appellee's objection to the legislation as discriminatory, and therefore there is no assignment of error in this regard, it may be that the Court will nevertheless consider the question.

It is not necessary to argue the proposition that all differences are not discriminatory.

> "Of course," says the Court (*W. U. T. Co.* vs. *Call Pub. Co.*, 181 U. S., 92) "the quality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast-iron rule of uniformity which prevents a

charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines."

All that is required is that rates must not discriminate without a just and reasonable ground for discrimination. This is a proposition so universally recognized as not to require the citation of authorities. By the provisions of the Interstate Commerce Act "it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail" (*Interstate Com. Commission* vs. *B. & O. R. R. Co.*, 145 U. S. (1891), 263, 276). "* * * Any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge" (*Id.*, bot. pp. 283, 284).

The judicious authors on Railroad Rate Regulations, referring to the subject, and citing numerous authorities in support of the propostion, say (Beale & Wyman, sec. 735):

"But it is not unjust discrimiation—it is not contrary to the common law, and it is not contrary to our statute—to make a difference in rates where the expense or difficulty of performing the services renders such discrimination fair and reasonable."

(Sec. 736): "It follows from what has been said that the differences may be made proportionate to the cost of service without the making of any illegal discrimination; indeed, in such cases it would be unreasonable not to make such differences upon that basis."

Applying this principle to the case under consideration, the classification is a reasonable one, because obviously the City is the largest consumer of the plaintiff, though the proportion of the whole supply is so small as to be almost negligible; and secondly the expense of furnishing gas to the City is far less in proportion to the cost than in the case of the individual consumer, with

no risk whatever, and therefore the price should be less. "Of the 13,283,163,767 cubic feet of gas sold and delivered by complainant, 398,525,978 were delivered and charged to The City of New York and 12,884,637,789 to private consumers" (Rec., p. 248). The difference of five cents per thousand feet is only $20,000, which, spread over the 13,283,163,367 feet of sales to all consumers, means only 0.15 per thousand feet, in favor of the City, which is so small that it may be properly ignored.

SPECIFICATION VI.

We submit, under Assignment One Hundred and Eighth, that against proceedings by mandamus to enforce any of the provisions in either of the acts of the Legislature of New York which are under consideration, the defense available in such proceedings affords appellee adequate protection, and that as to the penalties imposed, the provisions in regard thereto being separable, it has an adequate remedy by injunction.

(*Reagan* vs. *Farmers' Loan & Trust Co.*, 154 U. S., 362, 395.)

SPECIFICATION VII.

In conclusion, we confidently affirm that the appellee has not shown, nor does all the evidence in this immense record prove clearly and beyond all doubt, that the enforcement of the legislation involved in these appeals would inevitably deprive the appellee of its property without due process of law or just compensation; or deny to it the equal protection of the law; or impair the obligation of its contract rights.

In passing the sentence of condemnation recorded in the Court below, the presiding Judge resolved *his doubt against the Legislature of the State of New York, and in favor of the appellee.* The proceedings before the Master seem, on the face of the record, to have been conducted from start to finish on the theory that the burden of sustaining the constitutionality of the statutes beyond a reasonable doubt was on the appellants. The period to which the Master limited the investigation of the business transactions of the appellee was selected by the appellee, and adopted over the protest of the appellants as being too short a period within which to ascertain the truth; the testimony of the witnesses for the appellee when conflicting with that of the appellants was preferred without any apparent good reason (Opinion, Rec., p. 422); the appellants were denied access to material evidence in the exclusive possession of the appellants; *twenty million of dollars* of capital for good will and franchise were allowed by the Master without even an effort to assign a specific value to either, and without any evidence of the specific value of either, and

there are many other indications in the record, some of which are pointed out in our Assignments of Error, of the burden which the appellants had to carry. We are not impugning the motives of the Master. On the contrary, we entertain no doubt whatever of his uprightness. We simply, under a sense of duty, state facts tending to show that, as the main issue was decided by resolving doubt against the statutes, so the case was tried on a wrong theory, to the manifest disadvantage of the defendant. For that reason, if there were no other, the decree, we think, should be reversed. We bespeak for the Assignment of Errors (pp. 444-477) a careful consideration, because they present concisely, in our judgment, unanswerable reasons why this Court should issue its mandate for the dismissal of the complaint with costs to appellants.

As already intimated, we have not deemed it worth while to analyze kindred cases that have been before this Court, because the underlying and general principles by which the decisions were governed are now well understood, and each case has depended on its own peculiar facts. But beneath and above all the difficulties of applying the underlying principle to legislation enacted under the police power, there stands the presumption in favor of the enactment. The violation of the organic law must be made to appear so plainly as to leave no room for doubt.

These laws were not enacted in an arbitrary or capricious spirit. They are the outcome of patient, exhaustive, conscientious investigation, beginning nearly a quarter of a century ago, soon after the organization of the appellee. At the session of the Legislature of New York of 1885 three Senators were appointed under a resolution of the Senate and directed to investigate the organization and capitalization of the appellee and to report at the next session of the Legislature. On March 1, 1886, the committee, having completed its labors, made report

to the Senate. How patient, exhausting and discriminating were its labors is attested by the minority and majority reports found in the record now here (pp. 5325-5388). We respectfully commend it, and the exhaustive report of Public Accountant Yalden (p. 5591), and the other report herein mentioned to the consideration of this Court for luminous and helpful information pertinent to these appeals.

Again during the year 1905 there was general and widespread complaint in The City of New York against the prices charged by the gas and electric lighting companies operating therein and of the quality of the service supplied by them, in consequence of which action was taken thereon by the Legislature, and a resolution was introduced in the Senate and concurred in by the Assembly, providing for an investigation into the organization and operation of the gas and electric light companies.

This resolution is as follows:

> "Whereas, There is general and widespread complaint in The City of New York of the prices maintained by the gas and electric lighting companies operating therein, and of the quality of the service, and
>
> "Whereas, The Board of Estimate and Apportionment in December, 1902, adopted a report declaring the prices of said companies for public lighting to be unreasonable and excessive, and that the interests of the companies had been so combined as to eliminate competition, and rejected their bids for public lighting; and
>
> "Whereas, The same prices for electric lighting in all the Boroughs and for gas lighting in all the Boroughs, except Manhattan and The Bronx, having been again bid for 1904, and the Commission

of Water Supply, Gas and Electricity having, notwithstanding a report of the Engineer of Surface Construction that said bids were exorbitant and should be rejected, entered into contracts with said companies for services between March, 1904, and March, 1905, at the prices named in said bids; and

"Whereas, An excessive price for lighting service in said city involves a great waste of city funds, and imposes a wrongful burden upon the taxpayers and inhabitants of the city;

"Resolved (if the Assembly concur), That a joint committee be appointed, consisting of three members of the Senate and four members of the Assembly, which committee shall as speedily as may be proceed to investigate and examine into the organization and operation of the gas and electric lighting companies; the reasonableness of the charges maintained by the gas and electric lighting companies operating in the City of New York for services rendered the city and its inhabitants with reference to the cost of the service and the capital actually employed therein; the conditions under which the business of the companies is conducted with reference to competition; the quality of the service; the circumstances connected with the negotiation and execution of the city light contracts of 1904; and any other phase of the gas and electric lighting business as conducted in the City of New York deemed by the company to be germane to the purpose of such investigation; that the committee report to the Legislature as soon as possible the results of their investigation, with such remedial measures as it may deem proper.

"Further Resolved, That the said committee be, and it hereby is authorized and empowered to re-

quire and enforce the attendance of witnesses, and the production of books and papers, to administer oaths, and to employ counsel, stenographers, clerks and such other employees as may be necessary for the purposes of the investigation. And a sum not exceeding twenty-five thousand dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purposes of said committee."

Accordingly, on March 30, 1905, an investigaton of said companies by a joint committee of the Senate and Assembly of the State of New York, under said resolution, was begun in the City of New York, and continued until April 29, 1905, when a report was made by said joint committee.

A copy of this report is annexed to and made part of the answer of the defendant, The City of New York, and the special attention of the Court is called thereto Record, p. 66) for a concise statement of the facts relating to the appellee deemed by the committee to have been established by the evidence.

In consequence of this report, and after an extended debate in the Legislature, the acts, chapter 736, Laws of 1905, and chapter 737, Laws of 1905, were passed.

Thereafter, and on or about the 20th day of November, 1905, the Commission of Gas and Electricity, established by chapter 737, Laws of 1905, on complaint of a hundred or more customers of the Consolidated Gas Company, began an investigation into the affairs of said company, and on the 23d day of February, 1906, said Commission made an order that "on and after the 1st day of May, 1906, the maximum price for gas which shall be charged by the Consolidated Gas Company of New York, in the Borough of Manhattan, City of New York, State of New York, be and is hereby fixed at eighty cents per thousand cubic feet."

This was followed in April, 1906, by the passage of chapter 125, Laws of 1906, by the Legislature.

A great mass of testimony was taken, and a large number of witnesses were examined by the joint committee of the Senate and Assembly in 1905. The Consolidated Gas Company was represented by the same counsel who appeared on its behalf in the trial of this action.

Again, before the Gas and Electric Light Commission, voluminous testimony was taken, many witnesses were examined, and the interests of the complainant company were again looked after by the same counsel.

The subject of the reduction in the charges of the complainant company by law was discussed at great length in the Legislature both at the sessions of 1905 and 1906.

Everything that could be said or done for or against the proposition was apparently said or done. The company put forward its protest and its reasons against such reduction to the best of the ability of the eminent counsel by whom it was represented.

The passage of these laws was not a capricious arbitrary act. It was the result of long and patient investigation after thorough consideration and discussion.

The record of both these investigations shows the most painstaking effort on the part of the Joint Committee in 1905, and on the part of the Commission in 1906 to ascertain what is the actual cost of the manufacture and supply of gas in The City of New York and what would be a fair and reasonable profit to the companies carrying on that business in that locality.

If, therefore, this high Court, in the discharge of the grave responsibility and delicate function involved in the arraignment at the bar of a Federal Court of a co-

ordinate department of one of the confederated sovereignties, shall be constrained to declare that the evidence in the record makes it clear—palpable—beyond all doubt—that the inevitable result of the enforcement of these enactments would be to deprive citizens of their property—if this shall become the inexorable duty of this high Court—the Legislature of New York must nevertheless be acquitted of heedlessness, capriciousness or factionalism in its action. On the tomb of its legislation should be inscribed "*Humanum est errare.*"

VIII.

Assignments of Error Nos. One Hundred and Nineteenth and One Hundred and Twentieth (Record, p. 476).

"In sustaining the report of the Master in Chancery denying the motion of this defendant at the end of complainant's case to dismiss the Bill of Complaint and overruling the exception of this defendant to such denial."

"In sustaining the report of the Master in Chancery denying the motion of this defendant at the end of the whole case to dismiss the Bill of Complaint and overruling the exception of this defendant to such denial."

The appellee wholly failed to prove the rates fixed confiscatory as alleged in its Bill of Complaint and the motion to dismiss the Bill of Complaint should have been granted and failure to do so was error.

See Corporation Counsel's motion to dismiss (Record, pp. 1868, 4815).

IX.

The final decree made and entered herein in favor of the appellee should be reversed and judgment rendered in favor of the appellants, with costs.

FRANCIS K. PENDLETON,
Corporation Counsel,
Solicitor for City of New York,
Appellant.

ALTON B. PARKER,
WILLIAM P. BURR,
Of Counsel.

Appendix.

(Record, page 5726, old page 1397).

EXTRACTS FROM CITY'S EXHIBIT 48.

YALDEN'S REPORT DATED DECEMBER 31, 1885.

II. Summary of the Accounts of the Constituent Companies of the Consolidated Gas-Light Company of New York.

Letters of Accounts.	Name of Company.	Capital at Time of Consolidation.	Paid in Cash.	Paid in from Surplus Profits.	Issued for Purchase of Property.	Number of Years in Existence.	Dividends Paid.	Profit in Stock on Consolidation or Difference in Par Value of Old and New Stock.	Surplus Assets.	Total Benefits.
A.	Manhattan	$4,000,000 00	$3,280,000 00	$720,000 00	.....	54	$26,347,675 66	$7,940,000 00	.....	$34,287,675 66
B.	New York	4,000,000 00	750,000 00	3,250,000 00	.....	60	18,484,078 50	3,000,000 00	$87,258 19	22,171,336 69
C.	Metropolitan	2,500,000 00	612,700 00	.....	$1,887,300 00	24	7,573,749 36	4,000,000 00	686,988 17	12,200,737 53
D.	Municipal	3,000,000 00	2,515,300 00	25,800 00	450,000 00	9	2,806,192 50	3,000,000 00	932,843 63	7,239,036 13
	Knickerbocker ..			*8,900 00						
E.	Harlem	2,000,000 00	1,569,050 00	80,000 00 †200,000 00	150,950 00	30	2,529,917 25	830,000 00	.....	3,359,917 25
		$15,500,000 00	$8,727,050 00	$4,284,700 00	$2,488,250 00	....	$57,741,613 27	$19,970,000 00	$1,707,089 99	$79,418,703 26

* Expense account.
† Appreciation or increased valuation of property.

Dividends paid in cash	$53,491,613 27	
Profits, etc., transferred to capital	4,250,000 00	
		$57,741,613 27
Surplus assets divided		1,707,089 99
Stock of Consolidated Company amount issued to stockholders	$35,470,000 00	
Deduct original stock at par	15,500,000 00	
Profit on stock		19,970,000 00
		$79,418,703 26

II.—Summary of the Accounts of the Constituent Companies of the Consolidated Gas-Light Company of New York—(Continued).

(Record, page 5727; old page 1398).

Letters of Accounts.	Name of Company.	Amount Paid by Consolidated Company for Property.	Cost of Property.	Appreciation of Profit.	Stock Issued by Consolidated Company in Payment of Property.	Liabilities Assumed by Consolidated Company. Bonds, Interest, Taxes, Dividends, etc.	Cash Paid by Consolidated Company.	Balance Due by Consolidated Company Unsettled.	Total.	Less Assets Taken Over.	Balance Bei Amount o Purchase Money.
A.	Manhattan	$11,966,461 60	$4,872,999 49	$7,093,462 11	$11,940,000 00	$590,724 08	$30,016 70	.....	$12,560,740 78	$594,279 18	$11,966,461
B.	New York.....	7,560,000 00	4,630,642 03	2,929,357 97	7,600,000 00	131,741 76	108,494 51	$1,000 00	7,841,436 27	281,436 27	7,560,000
C.	Metropolitan	7,175,000 00	5,292,175 35	1,882,824 65	6,500,000 00	825,763 46	23,753 46	.....	7,349,516 92	174,516 92	7,175,000
D.	Municipal	5,100,000 00	4,092,347 86	1,007,652 14	6,600,000 00	402,410 33	236,565 72	30,000 00	8,444,247 53	344,247 53	8,100,000
	Knickerbocker	3,000,000 00	810,481 15	2,189,518 85		1,175,271 48					
E.	Harlem	$3,025,803 49	1,243,986 97	1,781,816 52	2,840,000 00	289,239 65	49,466 28	.....	3,178,705 93	142,902 44 $10,000 00	3,025,803
		$37,827,265 09	$20,942,632 85	$16,884,632 24	$35,480,000 00	$3,415,150 76	$448,496 67	$31,000 00	$39,374,647 43	$1,547,382 34	$37,827,265

II.—Summary of the Accounts of the Constituent Companies of the Consolidated Gas-Light Company of New York—(Continued).

(Record, page 5727; old page 1398).

Name of Company.	Amount Paid by Consolidated Company for Property.	Cost of Property.	Appreciation of Profit.	Stock Issued by Consolidated Company in Payment of Property.	Liabilities Assumed by Consolidated Company. Bonds, Interest, Taxes, Dividends, etc.	Cash Paid by Consolidated Company.	Balance Due by Consolidated Company Unsettled.	Total.	Less Assets Taken Over.	Balance Being Amount of Purchase Money.
Manhattan	$11,966,461 60	$4,872,999 49	$7,093,462 11	$11,940,000 00	$390,724 08	$30,016 70	.....	$12,560,740 78	$594,279 18	$11,966,461 60
New York.....	7,560,000 00	4,630,642 03	2,929,357 97	7,600,000 00	131,741 76	108,694 51	$1,000 00	7,841,436 27	281,436 27	7,560,000 00
Metropolitan	7,175,000 00	5,292,175 35	1,882,824 65	6,500,000 00	825,763 46	23,753 46	.....	7,349,516 92	174,516 92	7,175,000 00
Municipal	5,100,000 00	4,092,347 86	1,007,652 14	6,600,000 00	402,410 33	236,565 72	30,000 00	8,444,247 53	344,247 53	8,100,000 00
Knickerbocker	3,000,000 00	810,481 15	2,189,518 85		1,175,271 48					
Harlem	‡3,025,803 49	1,243,986 97	1,781,816 52	2,840,000 00	289,239 65	49,466 28	.....	3,178,705 93	142,902 44 ‡10,000 00	3,025,803 49
	$37,827,265 09	$20,942,632 85	$16,884,632 24	$35,480,000 00	$3,415,150 76	$448,496 67	$31,000 00	$39,374,647 43	$1,547,382 34	$37,827,265 09

(Record, page 5729.)

On the 11th of November, 1884, all the companies before named, excepting the New York Mutual Gaslight Company, were organized under the name of the Consolidated Gaslight Company, with a capital of..... $45,000,000 00

By reason of the Mutual not joining in the consolidation, the amount was reduced by..... 5,922,000 00

Reducing the original amount of stock to..... $39,078,000 00

Of this there was apportioned to the various companies in payment of their plant, works, real estate, franchises, etc.. 37,775,000 00

Reserving for working capital..... $1,303,000 00

The following gives the details of the valuation:

	New York.	Manhattan.	Metropolitan.	Municipal.	Knickerbocker.	Harlem.	Total.
Street mains, valves, etc.....	$950,000 00	$1,083,000 00	$971,000 00	$749,000 00	$744,000 00	$720,000 00	$5,217,000 00
Meters	215,000 00	267,000 00	273,000 00	158,000 00	69,000 00	113,000 00	1,195,000 00
Services	127,000 00	350,000 00	233,000 00	103,000 00	81,000 00	111,000 00	1,005,000 00
Plant	2,874,000 00	3,623,000 00	2,044,000 00	1,804,000 00	980,000 00	826,000 00	12,151,000 00
Real Estate.....	1,607,000 00	3,563,000 00	1,474,000 00	889,000 00	480,000 00	604,000 00	8,617,000 00
Bulkheads, piers and water rights	250,000 00	425,000 00	300,000 00	200,000 00	115,000 00	100,000 00	1,390,000 00
Office buildings.....	100,000 00	175,000 00	.....	.....	.....	50,000 00	325,000 00
Office furniture.....	15,000 00	20,000 00	12,000 00	16,000 00	2,000 00	5,000 00	70,000 00
Laboratories, photometer room, etc.	5,000 00	5,000 00	5,000 00	6,000 00	1,000 00	2,000 00	24,000 00
	$6,143,000 00	$9,611,000 00	$5,312,000 00	$3,925,000 00	$2,472,000 00	$2,531,000 00	$29,994,000 00
Rights, franchises, etc.....	1,147,000 00	2,329,000 00	1,863,000 00	1,175,000 00	528,000 00	469,000 00	7,781,000 00
Totals	$7,560,000 00	$11,940,000 00	$7,175,000 00	$5,100,000 00	$3,000,000 00	$3,000,000 00	$37,775,000 00

(Record, page 5731.)

The Consolidated Company having assumed the liabilities of the several companies, the issue of stock to the various stockholders of the old companies was further reduced by the amount of such debts, and finally adjusted at $35,430,000, as follows:

Companies.	Gross Value of Properties.	Deduction of Debts.	Amount of Stock to be Issued.	Amended Amount of Stock Issued Per Journal, Fol. 21.
New York	$7,560,000 00	$6,000 00	$7,554,000 00	$7,560,000 00
Manhattan	11,940,000 00	.....	11,940,000 00	11,940,000 00
Metropolitan	7,175,000 00	688,000 00	6,487,000 00	6,500,000 00
Municipal	5,100,000 00	328,000 00	4,772,000 00	6,000,000 00
Knickerbocker	3,000,000 00	1,137,000 00	1,863,000 00	
Harlem	3,000,000 00	170,000 00	2,830,000 00	2,830,000 00
Totals	$37,775,000 00	$2,329,000 00	$35,446,000 00	$35,430,000 00

The following statement will show the capital stock of the old companies, and the value of the stock in the Consolidated Company given in exchange therefor:

Companies.	Capital Stock.	Capital Stock in the Consolidated Company.	Proportion of New Stock to Old Stock.
New York	$4,000,000 00	$7,560,000 00	189
Manhattan	4,000,000 00	11,940,000 00	298½
Harlem	2,000,000 00	2,840,000 00	142
Metropolitan	2,500,000 00	6,500,000 00	260
Municipal	3,000,000 00	4,750,000 00	158 1/3
Knickerbocker	1,500,000 00	1,850,000 00	123 1/3
	$17,000,000 00	$35,440,000 00	

Complainant's Exhibit 79.

(Record, facing page 5032.)

CONSOLIDATED GAS COMPANY OF NEW YORK.

VARIATION IN REAL ESTATE, PLANT, PROPERTY AND CONSTRUCTION FROM DATE OF CONSOLIDATI
NOVEMBER 11th, 1884 to OCTOBER 31, 1905.

	Valuation at Consolidation Nov. 11th, 1884.	Construction Since Consolidation	Depreciation (Renewals) Since Consolidation	Net Increase	Valuation October 31, 1905.	Expended in Repairs Since Consolidation to October 31st, 1905.
Real Estate	$10,332,000.00	$597,789.57	.....	$597,789.57	$10,929,789.57	
Buildings, Machinery, Holders, } Plant	12,182,491.41	5,132,620.41	$1,227,683.10	3,904,937.31	16,087,428.72	$1,275,749.03 4,865,362.51
Mains	5,233,962.10	3,459,249.15	841,060.22	2,618,188.93	7,852,151.03	2,131,176.37
Services	1,034,241.41	711,502.55	533,672.87	177,829.68	1,212,071.09	1,297,653.12
Meters	1,231,753.98	2,460,066.34	750,783.25	1,709,283.09	2,941,037.07	1,864,717.53
Meter Cocks and Connections	11,926.53	622,347.60	320,559.66	301,787.94	313,714.47	.....
Pipe and Specials	88,398.43	105,667.28	80,806.07	24,861.21	113,259.64	.....
Office Furniture and Fixtures	70,000.00	64,503.02	94,794.29	*30,291.27*	39,708.73	.....
Horses, Wagons and Harness	1,115.00	105,535.34	82,521.99	23,013.35	24,128.35	.....
Automobiles and Accessories	.....	6,915.15	.....	6,915.15	6,915.15	.....
Tools and Implements	3,273.70	394,875.02	341,803.55	53,071.47	56,345.17	558,214.89
Gas Stoves	1,256.45	783,661.04	497,297.72	286,363.32	287,619.77	338,793.23
Scows	.....	19,816.15	.....	19,816.15	19,816.15	.....
	$30,190,419.01	$14,464,548.62	$4,770,982.72	$9,693,565.90	$39,883,984.91	$12,331,666.68
Franchises and Rights	7,781,000.00				7,781,000.00	
	$37,971,419.01				$47,664,984.91	

* Figures in *italics* in red ink in original.

Complainant's Exhibit 79.

(Record, facing page 5032.)

CONSOLIDATED GAS COMPANY OF NEW YORK.

VARIATION IN REAL ESTATE, PLANT, PROPERTY AND CONSTRUCTION FROM DATE OF CONSOLIDATION NOVEMBER 11th, 1884 to OCTOBER 31, 1905.

	Valuation at Consolidation Nov. 11th, 1884.	Construction Since Consolidation	Depreciation (Renewals) Since Consolidation	Net Increase	Valuation October 31, 1905.	Expended in Repairs Since Consolidation to October 31st, 1905.	
.....	$10,332,000.00	$597,789.57	.....	$597,789.57	$10,929,789.57	$1,275,749.03	Repairs to Buildings.
.....	12,182,491.41	5,132,620.41	$1,227,683.10	3,904,937.31	16,087,428.72	4,865,362.51	" " Apparatus.
.....	5,233,962.10	3,459,249.15	841,060.22	2,618,188.93	7,852,151.03	2,131,176.37	
.....	1,034,241.41	711,502.55	533,672.87	177,829.68	1,212,071.09	1,297,653.12	
.....	1,231,753.98	2,460,066.34	750,783.25	1,709,283.09	2,941,037.07	1,864,717.53	
Connections.....	11,926.53	622,347.60	320,559.66	301,787.94	313,714.47	.....	
.....	88,398.43	105,667.28	80,806.07	24,861.21	113,259.64	.....	
nd Fixtures....	70,000.00	64,503.02	94,794.29	*30,291.27*	39,708.73	.....	
nd Harness....	1,115.00	105,535.34	82,521.99	23,013.35	24,128.35	.....	
Accessories.....	.....	6,915.15	.....	6,915.15	6,915.15	.....	
ents.....	3,273.70	394,875.02	341,803.55	53,071.47	56,345.17	558,214.89	
.....	1,256.45	783,661.04	497,297.72	286,363.32	287,619.77	338,793.23	
.....	.....	19,816.15	.....	19,816.15	19,816.15	.....	
	$30,190,419.01	$14,464,548.62	$4,770,982.72	$9,693,565.90	$39,883,984.91	$12,331,666.68	
ghts.....	7,781,000.00				7,781,000.00		
	$37,971,419.01				$47,664,984.91		

* Figures in *italics* in red ink in original.